

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

EB Docket No. 03-152

In the Matter of)	
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNGS, Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES, INC.)	Facility ID No. 3365
)	
Permittee of FM Station KAAX, Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL SERVICES, INC.)	Facility ID No. 9993
)	
Permittee of FM Station KAJP, Firebaugh, California)	
)	
H.L. CHARLES D/B/A FORD CITY BROADCASTING)	Facility ID No. 22030
)	
Permittee of FM Station KZPE, Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY BROADCASTING)	Facility ID No. 37725
)	
Licensee of FM Station KZPO, Lindsay, California)	
)	
In re Application of)	
)	
WESTERN PACIFIC BROADCASTING, INC.)	File No. BR-19970804YJ
)	Facility ID No. 71936
For Renewal of License for AM Station KKFO, Coalinga, California)	

ORDER TO SHOW CAUSE, NOTICE OF OPPORTUNITY FOR HEARING, AND HEARING
DESIGNATION ORDER

Adopted: July 1, 2003

Released: July 16, 2003

By the Commission:

1. The Commission has before it for consideration the construction permits and associated applications for license for stations (a) KNGS(FM), Coalinga, California, permitted to William L. Zawila ("Zawila"); (b) KAAX(FM), Avenal, California, permitted to Avenal Educational Services, Inc. ("AES"); (c) KAJF(FM), Firebaugh, California, permitted to Central Valley Educational Services, Inc. ("CVES"); and (d) KZPE(FM), Ford City, California, permitted to H.L. Charles d/b/a Ford City Broadcasting ("FCB"). Also before us is the license of (e) Linda Ware d/b/a Lindsay Broadcasting ("LB"), for station KZPO(FM), Lindsay, California, and the license renewal application of (f) Western Pacific Broadcasting, Inc. ("WPBI"), for station KKFO(AM), Coalinga, California. Zawila is associated with each of AES, CVES, FCB, LB, and WPBI, either as an officer, director, shareholder, or counsel.

2. Information now before the Commission raises serious questions as to whether Zawila, AES, CVES, FCB, LB, and WPBI possess the qualifications to be or remain licensees of the captioned radio broadcast stations. This information could warrant revocation of the captioned permits and license and/or denial of the captioned renewal application.¹ This proceeding is intended to encompass all licenses and/or permits held by Zawila, AES, CVES, FCB, and LB, and the renewal application of WPBI for KKFO(AM).

BACKGROUND

3. On November 17, 1999, Richard M. Smith ("Smith"), licensee of station KMAK(FM), Orange Cove, California, filed an Informal Objection against Zawila's license application for KNGS(FM), Coalinga, California ("KNGS"). Smith alleges that Zawila has made material misrepresentations to the Commission regarding the construction and operation of KNGS, and requests that we deny Zawila's application for license to cover the construction permit for that station.²

4. Based upon the evidence presented by Smith in his Informal Objection, the Enforcement Bureau, at the request of the Audio Division, Media Bureau, initiated an investigation into Smith's allegations. Based further upon the findings of the KNGS investigation and upon other evidence in its possession, the Enforcement Bureau conducted investigations into five other facilities with which Mr. Zawila was involved, either as a principal, counsel, or shareholder. Those facilities are:

- KAAX(FM), Avenal, California, permitted to AES
- KAJF(FM), Firebaugh, California, permitted to CVES
- KZPE(FM), Ford City, California, permitted to FCB
- KZPO(FM), Lindsay, California, licensed to LB
- KKFO(AM), Coalinga, California, licensed to WPBI

5. The results of the investigations into these stations indicate there are substantial and material questions of fact as to disqualifying conduct with regard to each station, including character issues against Zawila. The specific facts surrounding each of these facilities are discussed below.

¹ Action on the license applications for stations KNGS(FM), KAAX(FM), KAJF(FM), and KZPE(FM) is being deferred pending resolution of the designated issues. In the event that the underlying permits for these stations are revoked, the license applications will be dismissed as moot.

² File No. BLH-19990804KJ.

A. KNKS(FM)

6. The Commission granted Zawila a construction permit for KNKS on October 19, 1987.³ The construction permit was extended four times.⁴ Twice the staff granted construction permits to replace those that had expired.⁵ Zawila filed an application for license to cover this permit on August 4, 1999.⁶ That application is still pending.⁷

7. The KNKS construction permit specified an antenna to be mounted at the 88-meter level of a 91-meter tower located at North Dome Ridge in Kettleman Hills, 6 kilometers east-northeast of Avenal, California.⁸ KNKS was authorized to broadcast with an effective radiated power of 19.0 kilowatts. KNKS was to be co-located with KAAX(FM), Avenal, California ("KAAX"), permitted to AES. One of AES's principals, Michael T. McKenna ("McKenna"), who also signed the 1994 modification application for KNKS as technical consultant, registered the tower on behalf of AES, obtaining the Antenna Structure Registration number 1060577. While the structure was initially registered, our records reflect that neither Zawila nor AES filed a subsequent FCC Form 854 with the Wireless Telecommunications Bureau, certifying that the tower had been completed, as required by Section 17.57 of our Rules.⁹

8. On September 14, 1999, Robert F. Turner, an engineer based in Bakersfield, California, wrote to the Commission's Enforcement Bureau and reported that he was contacted on or about July 29, 1999, by individuals whom he later identified as Zawila and Mr. Jay Stevens ("Stevens"). According to Mr. Turner, Zawila and Stevens attempted to secure his engineering services to supervise the construction of KNKS's facilities, as well as those of other stations with which Zawila was connected. Mr. Turner further stated that Zawila informed him that the stations, including KNKS, would have to be built with facilities less than those authorized by the construction permits. Specifically, they were to be built with antennas mounted on utility poles, utilizing portable power generators (as no electricity was available at the sites), and without main studios. In a subsequent interview with a Commission investigator, Mr. Turner confirmed that Zawila requested he install utility poles at the site for KNKS and KAAX(FM).

9. On November 17, 1999, Smith filed his Informal Objection with the Commission. He alleged that he had visited the site of KNKS on September 4, 1999, one month after Zawila filed the KNKS license application. Upon reaching the site, he found no 91-meter tower, as authorized by the KNKS construction permit, but rather two utility poles approximately 50 feet in height, each with an FM

³ File No. BPH-19850709MT, as modified by BMPH-19940217IB. The modification, allowing KNKS to go from Class A to Class B, was granted April 19, 1996, over Smith's separate, earlier-filed objection.

⁴ We granted the following extensions to KNKS's construction permit: File No. BMPH-19890417JL (granted Sept. 5, 1989); BMPH-19900305JL (granted Mar. 2, 1992); BMPH-19930503JB (granted Apr. 19, 1996); and BMPH-19970715JA (granted Feb. 4, 1999).

⁵ File No. BPH-19920904JY (granted Nov. 3, 1992); File No. BPH-19961118JA (granted Nov. 15, 1997).

⁶ File No. BLH-19990804KJ.

⁷ Action on this application is being deferred pending the outcome of this proceeding.

⁸ The tower's coordinates were specified in the permit as 36 degrees 0 minutes 40 seconds north latitude, 120 degrees 4 minutes 26 seconds west longitude.

⁹ 47 C.F.R. § 17.57.

antenna mounted on it. Smith did not observe a main studio at the site, although Zawila stated in Section II, Item 18 of his license application that KNGS's main studio was also located at this site. Smith's description of the facilities he observed, and the photographs (taken subsequent to his September 4 visit) attached to his objection, conformed to Mr. Turner's description of the facilities he stated Zawila asked him to help construct.

10. In a supplement to his Informal Objection, filed December 29, 1999, Smith contended that the KNGS facilities, as constructed, would not be able to provide a principal community signal over the community of license, Coalinga, California, thus indicating a violation of Section 73.315 of our Rules.¹⁰

11. On August 22, 2000, the Bureau's Audio Division wrote Zawila to request that he file a response to Smith's Informal Objection within 30 days. Zawila did not file a timely response, but instead requested extensions of time by letters dated September 20, 2000, October 20, 2000, and November 21, 2000.

12. Beginning November 20, 2000, the Commission's San Francisco Field Office, at the request of the Audio Division, commenced an investigation of KNGS. In a visit to the KNGS / KAAX site, the Commission's field agent found facilities identical to those described and depicted by Smith and Turner. The investigator gained access to the site by permission of officials of an oil company that controlled private roads to the site, as Zawila was contacted to provide access but was unavailable, and no personnel were available at KNGS to permit inspection. Inquiries by the investigator at the site revealed that workers in an oil field near the site had never seen the 91-meter tower specified in KNGS and KAAX's construction permits. Subsequent investigation also revealed that the site was located on land owned by the Bureau of Land Management of the U.S. Department of the Interior ("BLM"), and that Zawila had no right-of-way to operate a radio station from that site. According to BLM, it approved only temporary testing at a different BLM site (the "La Cima site") approximately one mile from the permitted KNGS site.¹¹ BLM informed the Commission's investigators that it never granted Zawila or AES right-of-way or other authority to utilize the permitted site for a radio station.

13. The Commission's field agent found no evidence of concrete footings, guy anchors, or other evidence of a 91-meter tower, or evidence of a main studio at the site. The Commission's staff has also determined that KNGS did not maintain a local telephone number in Coalinga or a toll-free telephone number.

14. On November 25, 2000, Zawila filed a letter response to Smith's Informal Objection. In the response, he stated as follows: "KNGS was constructed in compliance with its construction permit. The KNGS tower was destroyed by vandalism after the license application was filed for KNGS." Zawila further stated that the telephone poles and antennas observed by Smith and the investigator were an "emergency antenna system." In a declaration attached to Zawila's response, McKenna stated under penalty of perjury that the KNGS tower was "destroyed by vandalism," and further stated that he

¹⁰ 47 C.F.R. § 73.315.

¹¹ In a letter dated May 19, 1999, written to BLM on behalf of AES and McKenna Communications, Zawila requested only "temporary informal permission to conduct testing with temporary portable equipment." No mention was made of erecting a 91-meter tower at either the La Cima site or the permitted KNGS site. In BLM's subsequent letter of May 27, 1999, BLM granted Zawila permission only "to pursue temporary placement of testing equipment at the La Cima communication site," and specifically precluded the "placement of permanent equipment or facilities at this site," until a formal right-of way was granted.

“reported the use of [the] emergency antenna system to the Commission.”¹² The Commission has no record of such a report. Stevens also provided a declaration under penalty of perjury, in which he stated that “KNGS was built in conformity with its construction permit as a Class B facility at its current site; [he] was personally involved in this construction project; the KNGS tower was destroyed by vandalism after the license application for KNGS was filed.” Stevens also referred in his declaration to “on-going vandalism problems” at KNGS, which he claimed were responsible for the station’s failure to provide service.

15. The Commission’s field agent spoke with a King’s County Sheriff’s Deputy, who indicated that Zawila had spoken with him only once about vandalism generally, and that when the deputy visited the KNGS site he observed no sign of the type of damage that would be evident when a 91-meter tower is destroyed. Further, while Zawila stated in his November 25, 2000, response that he had reported the vandalism problems to the Sheriff, he later stated he had not made a formal report of the alleged destruction of the 91-meter KNGS / KAAX tower to the police, as it was an uninsured loss and no one was injured. In a follow-up interview, McKenna stated he had no firsthand knowledge that KNGS had been constructed as specified in the construction permit, but in his declaration had merely repeated information obtained from others. A follow-up interview with Stevens revealed that he had not, in fact, been involved at all in construction of the specified 91-meter tower. He admitted his declaration regarding tower construction was misleading. Stevens did say that he had seen the tower, which he reported was on a steel plate with no concrete foundation, and that it had come down two weeks after the station went on the air.

16. In his follow-up to the investigation of KNGS, the Commission’s field agent requested documents from Zawila to support the claims of tower construction and vandalism. Zawila produced documents showing that he had purchased a 300-foot Rohn tower for use at radio station KPMA(FM), Altamont, Oregon, but no documents to show that it had ever been transported to California. Zawila stated he was precluded by BLM from setting concrete foundations for the tower, and was instead forced to utilize a “screw-anchor” system for the tower.

17. Also at the request of the Commission’s field agent (and after several delays, allegedly due to the death of one of the principals of the tower erector), Zawila produced a contract and invoice for the erection of the 91-meter KNGS / KAAX tower by Kunec Engineering and Michael G. Kunec of Anaheim, California. Kunec Engineering was also to have fabricated the screw anchors for the tower. According to the invoice Zawila produced, this work was performed for a total of \$16,895, to be paid by “exchange for legal services.” Zawila stated, and Commission staff confirmed, that Mr. Kunec had since passed away.

18. Commission investigators and staff subsequently determined that Michael G. Kunec, at the time he allegedly performed this work, was 80 years old and legally blind; that according to some reports he was not mentally competent;¹³ that he had never erected a radio tower and did not have the ability to fabricate the screw anchors; that Michael G. Kunec was not registered with the California State Board of Professional Engineers, and that neither Mr. Kunec nor “Kunec Engineering” was registered

¹² Declaration of Michael T. McKenna, ¶ 6. As noted in the text, Mr. McKenna was the technical consultant for KNGS’s 1994 application for construction permit, and was also listed in the permit application as the “owner’s agent” from whom Zawila obtained reasonable assurance of availability of the KNGS/KAAX site. FCC 301, File No. BMPH-19940217IB, at 25.

¹³ Commission agents learned that an investigator for the Orange County Public Guardian had determined that Mr. Kunec suffered from dementia, and accordingly was incapable of handling his personal affairs.

with the California State Board of Contractors to construct antenna structures; that the City of Anaheim had never issued a business license to, and had no record of, "Kunec Engineering," nor did the County of Orange have any record of the business for personal property tax purposes; that the U.S. Postal Service found no addressee named "Kunec Engineering" at the address given on the invoice Zawila produced; and that the telephone number on the "Kunec Engineering" invoice Zawila produced had never been assigned to a business by that name.

19. The Commission's field agent also requested from Zawila copies of station logs, required to be maintained under Section 73.1820(a) of our Rules,¹⁴ which among other things would contain entries concerning the extinguishment or improper functioning of tower lighting, Emergency Alert System tests, and other information concerning the alleged operation of KNGS since the commencement of automatic program tests. Zawila has not produced these logs.

20. On January 25, 2002, the Audio Division wrote Zawila a letter detailing the above findings, and providing Zawila an opportunity to submit any exculpatory or explanatory information regarding this potentially disqualifying misconduct. On February 22, 2002, Zawila requested a 30-day extension of time in which to respond, which the Audio Division granted.¹⁵ In a letter dated March 26, 2002, Zawila requested a further extension of time to respond. Zawila requested a further 30-day extension of time by letter dated April 29, 2002, and 20-day extensions of time by letters dated May 28, 2002, June 18, 2002, July 8, 2002, July 28, 2002, August 19, 2002, September 9, 2002, September 30, 2002, October 21, 2002, November 10, 2002, December 1, 2002, and December 31, 2002. To date, Zawila has not responded to the Audio Division's requests, except as described below.

21. To his letter of March 26, 2002, Zawila attached declarations of two individuals, Wallace Schnitger and Clinton Bashore, addressing the Commission's tentative findings regarding Michael Kunec's ability to construct a 91-meter tower. Both individuals attest to having known Michael Kunec for many years, and state that Kunec had a machining and steel fabrication facility in Anaheim, California, that he purchased in December 1998. Messrs. Schnitger and Bashore both indicate their belief that Kunec was mentally and physically capable of supervising the construction and erection of a radio tower during 1998 and 1999. Neither witness testifies as to whether Mr. Kunec was involved in constructing the KNGS/KAAX tower specifically. Zawila also attached to his March 26, 2002, letter a photocopy of a Grant Deed, recorded December 18, 1998, indicating that a parcel of property in the City of Anaheim, California, was transferred to Michael George Kunec. Also, Zawila attached to his December 31, 2002, letter a copy of what he represents is Michael George Kunec's diploma in Electrical Engineering, conferred by the University of Manitoba in May 1950. Zawila states that this document "more than demonstrates Michael Kunec's ability to render the services performed by Mr. Kunec . . . in connection with KNGS(FM)."

22. By letter dated November 20, 2002, reiterated in an April 25, 2003, letter, Smith argues that Zawila's construction permit for KNGS expired as a matter of law on November 25, 2001. Smith contends that Section 312(g) of the Communications Act of 1934,¹⁶ which provides that a broadcast station license expires at the end of any period of twelve consecutive months in which the station does not

¹⁴ 47 C.F.R. § 73.1820(a).

¹⁵ In its letter granting the extension, the staff cautioned Zawila that it would "not entertain requests for further extensions of time to respond except in extraordinary circumstances, supported by appropriate evidence." *Letter to William L. Zawila, Esq.*, Ref. No. 1800B3-TSN (MMB Feb. 26, 2002).

¹⁶ 47 U.S.C. § 312(g).

transmit broadcast signals, applies to KNGS. Under Smith's argument, the term "station license" in Section 312(g) includes a construction permit.¹⁷ However, we reject Smith's argument, and find that the term "station license" in Section 312(g) refers to a license and not a construction permit.

B. KAAX(FM)

23. The Commission granted AES a construction permit for KAAX on March 10, 1993.¹⁸ The application for the permit was signed on March 16, 1989, by George Sullivan as president of AES.¹⁹ The construction permit was extended three times,²⁰ and twice the staff granted construction permits to replace those that had expired.²¹ AES filed a license application to cover this permit on August 10, 1999.²² That application is still pending.²³ Zawila signed the license application as vice president and general counsel of AES.

24. The modified construction permit covered by the KAAX license application called for the antenna to be mounted at the 44-meter level of a 91-meter tower located at North Dome Ridge in Kettleman Hills, 6 kilometers east-northeast of Avenal, California.²⁴ AES stated in Section II, item 18 of its license application that KAAX's main studio was also located at this site. KAAX was to be co-located with KNGS. As noted in paragraph 7, *supra*, McKenna, who also served as technical consultant for Zawila in the KNGS application, registered the tower on behalf of AES, obtaining the Antenna Structure Registration number 1060577. Our records reflect that neither Zawila, McKenna, nor AES filed a subsequent FCC Form 854 with the Wireless Telecommunications Bureau, certifying that the tower had been completed.

25. The KAAX license application contained conflicting information regarding the station's construction. AES's response to Section II, Item 9(g), indicated that KAAX's radiation center would be four meters lower than specified in the construction permit, or 40 meters above ground level, and that the

¹⁷ Smith bases his contention on 47 U.S.C. § 153(42), which defines "station license" as "that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission."

¹⁸ File No. BPED-19890320MB, as modified by BMPED-19960826IA. The modification moved the location of the KAAX transmitter and antenna to the same site as the KNGS(FM) transmitter and antenna, to be mounted on a 91-meter tower (per amendment filed June 4, 1997). AES filed a further amendment to this modification application on September 5, 1997, to change its channel from 289A to 236A.

¹⁹ Subsequent inquiry of the California Secretary of State's corporation database showed that AES was not incorporated until March 5, 1999.

²⁰ The Bureau granted the following extensions to KAAX's construction permit: File No. BMPED-19940913JA (granted Oct. 28, 1994); BMPED-19960808JA (granted Oct. 15, 1996); and BMPED-19970415JA (granted May 2, 1997).

²¹ File No. BPED-19950628JA (granted Feb. 8, 1996); File No. BPED-19971112JA (granted Feb. 4, 1999).

²² File No. BLED-19990810KC.

²³ Action on this application is being deferred pending the outcome of this proceeding.

²⁴ The tower's coordinates were specified in the permit as 36 degrees 0 minutes 40 seconds north latitude, 120 degrees 4 minutes 26 seconds west longitude. These were also the coordinates specified for KNGS(FM).

tower on which the KAAX antenna was mounted was 41.3 meters above ground level, rather than the 91 meters described in the construction permit. However, the response to Section II, Item 11(a) indicated that the KAAX antenna was mounted on the antenna structure registered as ASRN 1060577, which as noted above was registered by McKenna on behalf of AES as a 91-meter tower.²⁵

26. As noted in paragraph 8 above, engineer Robert F. Turner confirmed to a Commission investigator that Zawila and Stevens requested he assist them in constructing KAAX, installing a utility pole instead of the permitted and registered tower at the KNGS/KAAX site, with no main studio. Mr. Turner declined to assist Zawila and Stevens, and first reported his contacts with them to the Enforcement Bureau by letter dated September 14, 1999.

27. Beginning November 20, 2000, the Commission's San Francisco Field Office, at the request of the Audio Division, commenced an investigation of KNGS, as a result of Smith's Informal Objection against KNGS. The results of the initial site visit and subsequent investigations regarding the KNGS/KAAX site are described in paragraphs 12 through 19, above. Moreover, there was no indication of the 41.3-meter tower described in the KAAX license application; such a tower would be approximately 135 feet in height, whereas the utility pole actually located on the site was approximately 50 feet above ground level. BLM informed Commission staff that it never granted right-of-way to any party to utilize the permitted site for a radio station, and has granted no authority to use that site.²⁶ Commission staff determined that KAAX did not maintain a local telephone number in Avenal or a toll-free telephone number.

28. As described in paragraphs 14 and 15, above, Zawila claims that the tower registered for KAAX and KNGS was destroyed by vandalism. Zawila's claim was supported by declarations of McKenna and Stevens, although as set forth in paragraph 15, above, both individuals later recanted some or all of their declarations. Also as set forth above, Commission investigation determined that the Kings County Sheriff received no report of the claimed vandalism and did not observe the tower or the aftermath of the alleged vandalism. Additionally, workers near the KNGS/KAAX site did not recall ever seeing the 91-meter tower.

29. As set forth in paragraph 17, above, Zawila provided documents in response to Commission requests indicating that "Kunec Engineering" had constructed the 91-meter KNGS/KAAX tower. However, as discussed in paragraphs 16 and 18, above, Commission investigators discovered evidence that calls Zawila's claims as to the tower's construction into question.

30. On January 25, 2002, the Audio Division wrote a letter to AES, in care of Zawila (whose address is AES's address of record with the Commission), detailing the above findings and providing AES the opportunity to submit exculpatory or explanatory information regarding this potentially disqualifying misconduct. On February 22, 2002, AES requested a 30-day extension of time in which to respond, which the Audio Division granted.²⁷ On March 26, 2002, AES requested a further extension of

²⁵ It also bears noting that, in the June 1997 amendment to its August 1996 modification application, AES attached a sketch of a guyed 91-meter tower, while KNGS, with which KAAX was to be co-located, supplied a sketch of a self-supporting 91-meter tower (File No. BMPH-19940217IB).

²⁶ See *supra* paragraph 12.

²⁷ In its letter granting the extension, the staff cautioned Zawila that it would "not entertain requests for further extensions of time to respond except in extraordinary circumstances, supported by appropriate evidence." *Letter to Avenal Educational Services, Inc.*, Ref. No. 1800B3-TSN (MMB Feb. 26, 2002).

time to respond. AES requested a further 30-day extension of time by letter dated April 29, 2002, and 20-day extensions of time by letters dated May 28, 2002, June 18, 2002, July 8, 2002, July 28, 2002, August 19, 2002, September 9, 2002, September 30, 2002, October 21, 2002, November 10, 2002, December 1, 2002, and December 31, 2002. To date, AES has not responded to the Audio Division's request, except as described below.

31. In his letter of March 26, 2002, Zawila (on behalf of AES) referenced and incorporated the evidence regarding Michael Kunec and his ability to construct the KNGS/KAAX tower that was attached to his letter of the same date regarding KNGS. That evidence is discussed at paragraph 21, *supra*. Zawila, again on AES's behalf, also attached a purported copy of Michael George Kunec's electrical engineering degree to his letter of December 31, 2002. That evidence is also discussed at paragraph 21, *supra*.

C. KAJP(FM)

32. The Commission originally granted CVES a construction permit for KAJP(FM), Firebaugh, California ("KAJP") on November 4, 1994.²⁸ The application was signed on October 14, 1988 by Linda Ross as president of Central Valley Educational Services, Inc.²⁹ The construction permit was extended twice,³⁰ and once the staff granted a construction permit to replace one that had expired.³¹ CVES filed a license application to cover the modified permit on August 5, 1999.³² That application is still pending.³³ Zawila signed the license application as vice president and general counsel of CVES.

33. The modified construction permit covered by the license application called for the KAJP antenna to be mounted at the 24-meter level of a 26-meter pole located 0.4 kilometers northwest of the main post office in downtown Firebaugh, California.³⁴ McKenna, a vice-president of CVES who also served as technical consultant on CVES's 1997 modification application,³⁵ registered the tower on behalf of CVES, obtaining the Antenna Structure Registration number 1063375. While the FCC Form 854 to register the structure was filed April 12, 1999, our records indicate that CVES has never filed a subsequent Form 854, as required by Section 17.57 of our Rules,³⁶ indicating that the structure has been completed.

²⁸ File No. BPED-19881017MD, as modified by BMPED-19971024IC. The modification moved the location of the KAJP transmitter and antenna, reduced the antenna height, and reduced the effective radiated power ("ERP").

²⁹ Subsequent inquiry of the California Secretary of State's corporation database showed that CVES was not incorporated until January 29, 2001.

³⁰ The Bureau granted the following extensions to KAAX's construction permit: File No. BMPED-19960506JA (granted July 16, 1996), and BMPED-19970324JA (granted Apr. 8, 1997).

³¹ File No. BPED-19971009JA (granted Feb. 4, 1999).

³² File No. BLEP-19990805KB.

³³ Action on this application is being deferred pending the outcome of this proceeding.

³⁴ The tower's coordinates were specified in the permit as 36 degrees 51 minutes 37 seconds north latitude, 120 degrees 27 minutes 19 seconds west longitude.

³⁵ See *supra* note 28.

³⁶ 47 C.F.R. § 17.57.

34. In Section II(18) of its August 5, 1999, license application, CVES certified that the facilities of KAJP had been built as specified in its construction permit. Additionally, CVES stated in Section II(18) that its main studio was located in the same place as its transmitter (i.e., 0.4 kilometers northwest of the main post office in downtown Firebaugh).

35. Robert F. Turner, an engineer who reported contacts with Zawila and Stevens described at paragraph 8, above, stated to the Commission's investigator that Zawila and Stevens had stated that KAJP, and other stations, would have to be built with facilities less than those authorized by the construction permits. In particular, the stations were to be built without main studio facilities, and would re-broadcast an off-air signal from another FM station in or near Porterville, California.

36. After receiving a February 20, 2001, letter from Zawila requesting a Special Temporary Authorization ("STA") for KAJP to go silent while replacing its antenna structure, the Audio Division requested that the Commission's San Francisco Field Office send an agent to inspect KAJP's then-extant facilities. The field agent traveled to Firebaugh, California on February 22, 2001. He monitored no broadcast activity from KAJP at any time during his inspection. Upon arrival in Firebaugh, the agent inspected the site at the coordinates specified in the license application and construction permit. He found no 26-meter pole at those coordinates or in that vicinity.

37. The agent then contacted Mr. Ray Knight, who was named as the site owner in CVES's 1997 modification application. Mr. Knight stated that KAJP was located on the second floor of a building occupied by Golden Valley Real Estate, on the southwest corner of the intersection of 10th and P Streets. The agent observed no 26-meter pole at that corner, as described in CVES's modification application.

38. Mr. Knight allowed the agent into the KAJP office, which bore no sign or other indication that it was a radio station. KAJP's facilities consisted only of an FM exciter and power amplifier, a personal computer, and a monitor. While there was a coaxial cable attached to the power amplifier, it ran through a window to a balcony and was unterminated. Mr. Knight stated that the antenna that had previously been attached to the equipment was a vertical antenna, attached to a light aluminum pole that was set on the balcony and extended approximately 25 feet up from the balcony, attached to the roof of the building. A building inspector for the City of Firebaugh also told the field agent that he had seen the antenna and estimated that it extended ten feet above the roofline of the building, or 31 feet from the balcony. The building inspector also noted that, had the antenna been mounted at the permitted height, the building owner would have had to obtain a building permit from the City, which the owner had not done. Both of the estimates of the height of the previous KAJP antenna indicate that it was mounted at less than half the height specified in KAJP's construction permit. In response to the field agent's inquiry, Zawila suggested that the KAJP antenna could only have been, and was, mounted 71.8 feet above the balcony, at a total height above ground of 26 meters (85.3 feet).

39. There was no program origination or Emergency Alert System ("EAS") equipment on the KAJP premises. Mr. Knight stated that the station was operated by remote control, rebroadcasting programming of a station in Visalia, California. Mr. Knight denied being associated with KAJP or having any records for the station, including the public file.³⁷ He did state that Golden Valley Real Estate

³⁷ In CVES's response to the San Francisco Field Office's April 18, 2001, inquiry letter (*see* paragraph 40), Zawila asserted that the KAJP public inspection file was located in the offices of Golden Valley Realty, 1572 10th Street, Firebaugh, California, in the same building as the main studio. At the time of the inspection, however, Mr. Knight, who works for Golden Valley Realty, denied having any KAJP documents, and repeated his denial during a subsequent telephone conversation with the field agent.

provided KAJP free space in the suite, which was occupied by the Chamber of Commerce. He also stated that KAJP had been using that space for six to eight months prior to the agent's visit, or since approximately June of 2000.

40. On April 18, 2001, the Commission's San Francisco Field Office sent a certified letter of inquiry to CVES, requesting logs, records, and other documents relating to KAJP. CVES filed a reply, and certain documents, on May 14, 2001, and a further response on June 4, 2001. Included among the documents produced was an invoice, #990491, dated July 27, 1999, for equipment purportedly purchased from Bext, Inc. by "Zawilla, Bill," including a four-bay antenna, 20-watt Model HMTFMR20 "translator," and a 500-watt amplifier. The Commission's agent also obtained a copy of the same invoice directly from Bext, noting several differences between the invoice produced by Bext and that produced by CVES.³⁸

41. CVES also stated in its response that HomeBase in Stanton, California (approximately 250 miles from Firebaugh) was paid \$900 in cash to help construct KAJP's facilities, and in a later interview with an agent from the Commission's Los Angeles Field Office, Zawila claimed that HomeBase dismantled the tower for the KAJP antenna. No documents were provided to support these statements, and no documents were provided to show that any of the equipment allegedly purchased was actually installed or erected. All that was produced, apart from the invoice, was an "FM Final Test Table" for an amplifier with the serial number PJK5-810.

42. In its response, CVES provided no schedule of operations or logs. It stated that "Mr. [Jay] Stevens was at the KAJP(FM) main studio on an intermittent basis. No schedule exists reflecting his presence at the KAJP(FM) main studio." Also attached was a designation of Stevens as Chief Operator, signed August 2, 1999, by Mr. Zawila as General Manager. CVES noted that Mr. Ray Knight and his staff of Golden Valley Realty "have provided a human presence for KAJP(FM) at its main studio building," although "they are not official representatives of KAJP(FM)." As for programming, CVES contended that it "commenced broadcasting under automatic program test authority on August 2, 1999, and ceased operation January 30, 2001." No program logs were attached; the only documents CVES provided with regard to programming were a series of notices from local organizations, with "FPSA" followed by a number handwritten on them. No documents were provided to indicate whether or when these notices were broadcast.

43. The investigator's review of the current local telephone directory yielded no local telephone number for KAJP. CVES's June 4, 2001, response to a Commission inquiry regarding a local or toll-free telephone number contained telephone records for Western Pacific Broadcasting, Inc. and "Western Pacific," both with the address 12550 Brookhurst Street, Garden Grove, CA 92840-4834. One of the telephone numbers listed was for a Firebaugh, California exchange; when called, the recorded message stated, "Kings Radio, Firebaugh, California, KAJP. You may leave a message for any other Kings Radio station as well." The number was the same as the local telephone number for station KZPO(FM), Lindsay, California, given to the agent by the executive director of the Lindsay Chamber of Commerce.³⁹ Another number contained in the phone records produced was the same number given by

³⁸ While both invoices bore the same date and invoice number, there were differences in two of the items listed, no serial number for the "translator" in the copy produced by CVES, and no freight charges in the CVES copy. Additionally, the fonts in the parts and price list of the two invoices were different from each other, as well as fonts in other parts of the invoices, and the CVES-produced copy bore an explanatory note that was missing from the Bext-produced copy.

³⁹ See paragraph 68 of the text.

Stevens to the Commission investigator when investigating KZPO, as the number Stevens used to monitor KZPO's programming.⁴⁰ When called, the investigator heard music on the line with no one answering.

44. On June 13, 2001, the investigator re-visited the KAJP facilities. He observed a new tower at the permitted site that had been fabricated and sold by U.S. Tower Corp. ("USTC") of Visalia, California, although not erected by USTC. According to USTC's specifications for the MA-770 "crank-up" style self-supporting tower delivered to KAJP, the tower reaches a maximum height above ground level of 21.64 meters, or 71 feet, which is below the height of 26 meters for the antenna structure set forth in KAJP's license application and construction permit. Zawila obtained a building permit for the new tower. A four-bay Bext BKG 88/4 antenna with cables, brackets, and nuts was lying on the floor of the KAJP office, appearing to be brand new. Mr. Knight confirmed this antenna was not the same as the one that he had previously seen installed on the balcony outside KAJP's office.

45. The Commission's investigator also inspected the Bext power amplifier at the KAJP office, noting that it bore the serial number PJK5-641, which was different than the serial number of the unit described in the test table produced by CVES. Equipment at the station now included a Bext Model XT30FM exciter and Model 716 FM stereo processor/generator, neither of which was listed in either the invoice produced to us by CVES or the one provided by Bext. The investigator also observed a Sony AM/FM clock radio, which was apparently being used as an EAS monitor, and various other equipment, including a telephone remote control & monitoring system, and a Hewlett-Packard computer with monitor and keyboard.

46. On January 25, 2002, the Audio Division wrote a letter to CVES in care of Zawila (whose address is CVES's address of record with the Commission), detailing the above findings and providing CVES an opportunity to submit any exculpatory or explanatory information regarding this potentially disqualifying misconduct. On February 22, 2002, Zawila, on behalf of CVES, requested a 30-day extension of time in which to respond, which the Audio Division granted.⁴¹ On March 26, 2002, CVES requested a further extension of time to respond. CVES requested a further 30-day extension of time by letter dated April 29, 2002, and 20-day extensions of time by letters dated May 28, 2002, June 18, 2002, July 8, 2002, July 28, 2002, August 19, 2002, September 9, 2002, September 30, 2002, October 21, 2002, November 10, 2002, December 1, 2002, and December 31, 2002. To date, CVES has not responded to the Audio Division's request, except as described below.

47. To his letter of March 26, 2002, Zawila (on behalf of CVES) attached copies of two communications purportedly relating to KAJP programming. One, from a Patrick Massey and dated February 15, 2000, commented favorably on KAJP's programming, but noted a problem with signal strength, stating that Mr. Massey "must get to within 3 miles of Firebaugh to get the signal. And even then, it is not strong enough to lock in stereo." The second appeared to be a facsimile letter from a Linda Camacho of Firebaugh, undated but with a fax header indicating it had been sent March 14, 2000, thanking Jay Stevens for playing a song. Neither Mr. Massey nor Ms. Camacho identified KAJP by its call letters, although Mr. Massey referred to it as a "King's Radio" station. Also attached was a copy of a facsimile from Mr. Knight of Golden Valley Realty and Rio Mesa Insurance dated August 17, 1999,

⁴⁰ See paragraph 72 of the text.

⁴¹ In its letter granting the extension, the staff cautioned Zawila that it would "not entertain requests for further extensions of time to respond except in extraordinary circumstances, supported by appropriate evidence." *Letter to Central Valley Educational Services, Inc.*, Ref. No. 1800B3-TSN (MMB Feb. 26, 2002).

referencing a press release for a “PAL Event.” This fax was addressed to “King’s Radio,” and not to KAJP.

48. Additionally, to his letter of December 31, 2002, Zawila attached two unverified statements of Ray C. Knight, dated, respectively, April 8, 2002, and April 24, 2002. In the former, Mr. Knight contests the field agent’s report regarding his conversations with Mr. Knight, and states the following:

- Mr. Knight did not state that KAJP used a vertical antenna, but was referring only to the structure used to support the antenna. Mr. Knight does not know the height of the original structure used to support the KAJP antenna;
- KAJP used a computer located in the office in Mr. Knight’s building for its programming, which programming was “designed especially for KAJP and carried public service announcements for the Firebaugh area with no commercials. KAJP did not rebroadcast another station.”;
- Mr. Knight did not state that KAJP did not have a public file at his building, and in fact KAJP’s public file was at Mr. Knight’s office at all times. Also, there has always been a sign on the desk in the KAJP office indicating that the public file is in Mr. Knight’s office;
- The statement that KAJP used its office since June 2000 is incorrect, as KAJP was in Mr. Knight’s building almost a year earlier. Equipment for KAJP was moved into the building in late July 1999, with KAJP beginning operating in early August 1999. Mr. Knight requested public service announcements for a PAL event on August 17, 1999;
- KAJP did not use two different antennas, but always the same antenna. Mr. Knight referred to two different towers used by KAJP; and
- No building permit was required for the original KAJP antenna structure, because it was a temporary structure. Mr. Knight repeats this in his April 24, 2002, statement, and sets forth his qualifications as a realtor, former planning commissioner, and civic leader of Firebaugh, as well as his familiarity with the Firebaugh building permit regulations.

Neither the April 8, 2002, statement nor the April 24, 2002, statement is signed under penalty of perjury or is notarized.

D. KZPE(FM)

49. The Commission originally granted FCB a construction permit for KZPE on July 12, 1990.⁴² The construction permit was extended three times,⁴³ and on six occasions the staff granted construction permits to replace those that had expired.⁴⁴ On behalf of FCB, Zawila filed an application

⁴² File No. BPH-19880504MB, as modified by BMPH-19930726IB, BMPH-19940705IB, and BMPH-19971110ID. FCB currently has another application for modification pending, File No. BMPH-20010213AAW.

⁴³ The Bureau granted the following extensions to KZPE’s construction permit: File No. BMPH-19930727JB (granted Jan. 3, 1994); BMPH-19960711JA (granted Sept. 13, 1996); and BMPH-19980610JC (granted July 8, 1998).

⁴⁴ File No. BPH-19920113JP (granted Feb. 27, 1992); File No. BPH-19921127JR (granted Jan. 27, 1993); File No. BPH-19940830JA (granted Jan. 11, 1996); File No. BPH-19970317JC (granted Apr. 18, 1997); File No. BPH-19971021JA (granted Dec. 10, 1997); and File No. BPH-19990126JA (granted Feb. 4, 1999).

for license to cover this permit on August 4, 1999 (the "License Application").⁴⁵ That application is still pending.⁴⁶

50. In granting FCB's November 1997 modification application for KZPE, the staff denied an informal objection filed by Sandra Soho ("Soho"), who alleged that the real party in interest in KZPE was FCB's attorney, Zawila. The staff denied the informal objection February 4, 1999,⁴⁷ due to lack of evidence.

51. Engineer Robert F. Turner, in his statement to a Commission investigator described more fully in paragraph 8, above, stated that Zawila and Stevens indicated that KZPE, among other stations, would have to be built with facilities less than those authorized by the construction permits. In particular, the stations, including KZPE, were to be built without main studio facilities, and would re-broadcast an off-air signal from another FM station in or near Porterville, California.

52. On February 21, 2001, field agents from the Commission's Los Angeles Field Office traveled to Bakersfield, California to speak to Ms. H.L. Charles, the applicant doing business as FCB, about KZPE. Ms. Charles did not sign the KZPE License Application, which was instead signed by Mr. Zawila. The signature block bore the following statement:

This application is signed by the attorney for the applicant, Ford City Broadcasting, due to the physical disability of the applicant's principal. All matters stated in this application are based on the personal knowledge of the applicant's attorney.

53. After being introduced by the manager of the trailer court in which she lived, Ms. Charles agreed to meet with the Commission's field agents. While Ms. Charles was aware that she owned a radio station, she did not know any details about its operations, and referred all inquiries regarding KZPE to her "manager," Mr. Zawila.⁴⁸

54. Following their meeting with Ms. Charles, the Commission's field agents inspected the facilities of KZPE, which inspection had been previously arranged through Zawila's office. The agents met Stevens at the transmitter / main studio site near Maricopa, California. Stevens described himself to the agents as an "outside contractor," also stating he expected to be named general manager of KZPE when it went on the air full-time. He was not in possession of any logs or records of KZPE, stating that the field agents would have to contact Zawila for such records.

55. The field agents' inspection revealed a non-operational facility. Such equipment as was present was housed in a metal shed that was open to the elements, and was sitting on a sheet of plywood that was laid upon the ground. While there was a diesel-powered generator at the site, Stevens stated that FCB was unable to find a fuel company that would deliver fuel to the site, due to the poor condition of the road leading to the site, and was also unable to find a company that would bring a large fuel tank to the site, which would allow the generator to run for an extended period of time. Because of this, according to

⁴⁵ File No. BLH-19990804KG.

⁴⁶ Action on this application is being deferred pending the outcome of this proceeding.

⁴⁷ *Letter to William L. Zawila, Esq. and Sandra Soho*, Ref. No. 1800B3-LAS (MMB Feb. 4, 1999).

⁴⁸ One of the Commission's field agents attempted to meet with Ms. Charles at her home on February 6, 2001, but at that time she refused to speak with the agent.

Stevens, KZPE had only been on the air during the end of July or early August of 1999 for testing, and again for about 30 minutes approximately six months prior to the agents' inspection.

56. Although in Section II(18) of the License Application, FCB set forth "Maricopa Ridge" in Maricopa, California (also the transmitter site) as the site of the main studio, the agents observed no main studio or any program origination equipment at the site. Stevens advised, and the field agents confirmed, that KZPE did have a local telephone number, (661) 765-7273, which gave an answering machine stating it was the phone number for KZPE and KZPO(FM), Lindsay, California. Mr. Stevens stated that he was able to control KZPE remotely using a cellular telephone and a remote control unit. However, none of the equipment was installed and Mr. Stevens was unable to demonstrate the remote control procedure. No remote control point(s) were listed in the License Application. There was no public file available for inspection at the site.

57. Stevens told the Commission field agents that programming for KZPE originated from KZPO in Lindsay, California, another station represented by Zawila, licensed to LB.⁴⁹ However, the FM receive antenna was not mounted or connected, was lying on the ground, and appeared damaged. There was also no EAS equipment on site; Mr. Stevens stated that EAS equipment had been purchased and that Zawila had the purchase order.

58. While Stevens stated that the pole on which the KZPE antenna was mounted was 70 feet tall with a 20-foot antenna extension, the agents estimated the pole to be 50 feet in height. The construction permit and license application indicated a radiation center for the antenna of 24 meters (78.74 feet). The field agents also observed no fence around the pole, and no radiation hazard signs posted.

59. The Commission's Los Angeles Field Office followed up the site inspection with a Letter of Inquiry dated February 28, 2001. FCB responded by letter dated April 4, 2001. FCB produced several invoices to "Coalinga Broadcasting Co. Inc." for rental of a portable generator, dated from August 31, 1999, to February 26, 2001, stating further that prior to August 31, 1999, FCB utilized a borrowed generator for which it made no payments. Also provided were a quote and two invoices to "Bill Zawilla" for various items of broadcast equipment, but no documents linking the invoices to FCB or KZPE.

60. FCB also produced program logs indicating that KZPE had been on the air on five separate occasions – July 30, August 2, August 4, and November 10, 1999, and again on November 3, 2000 – and that on those occasions it rebroadcast the programming of KZPO(FM), Lindsay, California. It stated that the "KZPE (FM) main studio has been located at the KZPE (FM) transmitter site at Maricopa Ridge, Maricopa, California," and produced a Designation of Jay Stevens as Chief Operator, signed August 4, 1999 by Zawila as General Manager of KZPE.

61. On March 15, 2001, one of the Commission's field agents viewed the public file of KZPE in the Taft, California Chamber of Commerce. Taft is the town immediately south of Ford City. Ms. Cindy Toskus of the Chamber of Commerce told the agent that the public file had been placed there approximately three weeks earlier, in February, 2001. FCB confirmed in its response to staff inquiry that the public file had only been in Taft since February, 2001. The public file consisted of copies of authorizations, applications, and related materials; a letter designating Jay Stevens as chief operator; and a copy of *Broadcasting and the Public*.

⁴⁹ See discussion at paragraphs 65 – 74 of the text.

62. At no time during the field agents' dealings with Stevens or Zawila, or in inspecting any documents relating to KZPE, did the agents see any documents bearing Ms. Charles's name or signature other than certain applications, none of which were filed in 1999 or thereafter. All KZPE applications filed in or subsequent to 1999 bear Zawila's signature. The Commission's investigation indicated that Ms. Charles is not currently involved in the operation of KZPE. While FCB represented in its license application that it was operating under automatic program test authority, Stevens represented to Commission agents that the station has never been in full-time operation. Although Mr. Stevens did not advise the field agents that he was chief operator of KZPE, documents in the KZPE public file designated Stevens as KZPE's chief operator.

63. On January 25, 2002, the Audio Division wrote a letter to FCB in care of Zawila (whose address is FCB's address of record with the Commission), detailing the above findings and providing FCB an opportunity to submit any exculpatory or explanatory information regarding this potentially disqualifying misconduct. On February 22, 2002, Zawila, on behalf of FCB, requested a 30-day extension of time in which to respond, which the Audio Division granted. On March 26, 2002, FCB requested a further extension of time to respond. FCB requested a further 30-day extension of time by letter dated April 29, 2002, and 20-day extensions of time by letters dated May 28, 2002, June 18, 2002, July 8, 2002, July 28, 2002, August 19, 2002, September 9, 2002, September 30, 2002, October 21, 2002, November 10, 2002, December 1, 2002, and December 31, 2002. To date, FCB has not responded to the staff's January 25, 2002, letter, except as set forth below.

64. To his December 31, 2002, letter on behalf of FCB, Zawila attached a Declaration of H.L. Charles, dated October 27, 1998, in which Ms. Charles refutes the allegations of Soho's petition to cancel the KZPE construction permit. Specifically, Ms. Charles alleges that she received an October 19, 1998, telephone call from a "George Wade," asking if she (Charles) were interested in acquiring any communications licenses, and stated she was not interested; that on October 24, 1998, she received a copy of Soho's petition in which Soho claims to have spoken to Charles, but that Ms. Charles had never spoken to Soho and did not make the statements attributed to her (Charles) in the Soho petition; that prior to receiving the call from George Wade, Zawila had advised Charles that Soho was personally attacking him and to report any suspicious calls concerning broadcasting matters to him; that she informed Zawila of the George Wade call; and that Charles objects to and resents the statements made in the Soho petition "as they are completely false." Charles's declaration was signed under penalty of perjury and notarized.

E. KZPO(FM)

65. Station KZPO(FM), Lindsay, California, is licensed to LB. We granted LB's application for a license to cover KZPO's construction permit February 4, 1999.⁵⁰ KZPO's license provides that its main studio and transmitter facilities are located at the Blue Ridge Communications Complex, Springville, California, at coordinates 36 degrees 17 minutes 14 seconds north latitude, 118 degrees 50 minutes 17 seconds west longitude.

66. The staff granted LB's license application for KZPO over the objection of Soho, who filed a petition to deny the application on the ground, among others, that the real party in interest in KZPO was Linda Ware's attorney, Zawila, and that Ms. Ware merely served as a "front" for Zawila's

⁵⁰ File No. BLH-19980206KB. The license application covered construction permit no. BMPH-19940915IF.

interest. The staff denied the petition to deny February 4, 1999,⁵¹ due to lack of evidence, and subsequently denied a petition for reconsideration.⁵²

67. A Commission field agent inspected KZPO on September 18, 1998, more than seven months after LB had certified in its covering license application that the station complied with the main studio requirements set forth at Section 73.1125 of our Rules.⁵³ That inspection revealed that, as of that date, KZPO did not have a main studio. On February 21, 2001, agents from the Commission's Los Angeles Field Office inspected the transmitter site of KZPE(FM), Ford City, California. At that time they met Stevens, who indicated that due to Zawila's inability to find a suitable studio site for KZPE, Stevens and Zawila planned to simulcast KZPE with KZPO, although facilities for off-air or other reception of KZPO's signal were not operational at that time.

68. On March 19-21, 2001, field agents from the Commission's San Francisco Field Office again inspected the facilities of KZPO. They started by viewing the public file, which was located at the Lindsay Chamber of Commerce, and not at the station's main studio, as required by Section 73.3526(b) of our Rules.⁵⁴ The public file contained only listener letters, copies of the station license, copies of public service announcements, and one e-mail message from Stevens dated March 17, 2001, stating that "Kings Radio" was off the air for five days the previous week. The executive director of the Chamber of Commerce had three contact names for KZPO: Ken Niles, Jay Stevens, and William Zawila. She also stated that KZPO's main studio was located at 4125 W. Mineral King, Suite 309, in Visalia, California, but that Mr. Niles advised her on March 12, 2001 that the studio would be moving to 1830 S. Mooney Blvd. in Visalia. Neither address was ever reported to the Commission.⁵⁵

69. After ascertaining that there was no such address as 4125 W. Mineral King in Visalia, the field agents went to KZPO's reported new address on Mooney Blvd. At that address, they found Mr. Niles in an office with some non-operational studio equipment, including EAS equipment that bore a note stating it was out of service. Mr. Niles said that the studio moved to that location approximately two months previously, and that there had been no main studio for KZPO prior to that time other than at the transmitter site. While Mr. Niles stated that he had worked for KZPO for three years as sales manager and operator of the station, he had never been to the transmitter site and was unable to make the transmission facilities available for inspection. He did state that he "occasionally" reported to the Lindsay Chamber of Commerce in order to maintain a presence in the community of license. Although Mr. Niles, at the request of the agents, left messages for Stevens and Zawila, they did not return the calls.

70. The following day, March 21, 2001, one of the Commission's agents visited the transmitter site for KZPO and was able to gain access to the transmission facilities by a technician at work on the trailers housing the equipment. The agent found no EAS equipment at the site. A microwave studio-transmitter link ("STL") receiver and antenna were at the site but were not operational. The transmitting equipment appeared to be fully operational, but the transmitter power output appeared to

⁵¹ *Letter to William L. Zawila, Esq. and Sandra Soho*, Ref. No. 1800B3-LAS (MMB Feb. 4, 1999).

⁵² *Letter to William L. Zawila, Esq. and Sandra Soho*, Ref. No. 1800B3-HM (MMB Sept. 13, 1999).

⁵³ 47 C.F.R. § 73.1125.

⁵⁴ *Id.* § 73.3526(b).

⁵⁵ *See id.* § 73.1125(d)(1) (after changing main studio location, "notification to the FCC in Washington shall be made promptly.").

exceed the limit of 105% of authorized output power. No station staff were available to make further tests or measurements.

71. After inspecting KZPO's transmitter facilities, the agent received a call from Zawila. Zawila proposed a site inspection March 29, but the agent informed him that the inspection had been conducted and advised Zawila of the findings regarding the transmitter. Zawila also indicated that the lease for the KZPO main studio in Visalia had been signed December 15, 2000, and the studio would be operational within 30 days; that once it was operational he would hire additional staff; that he was coordinating an STL frequency with the local broadcast frequency coordinator, but had not yet filed an application for an STL authorization; that the only EAS equipment for the station was that at the Mooney Blvd. location in Visalia; and that the remainder of the public file was located at his office in Garden Grove, California. In addition to informing Zawila of the agent's transmitter inspection and findings, the agent advised Zawila that the public file was incomplete and that the station did not have a required main studio until December 15, 2000. The agent also requested inspection of the remainder of the public file, station logs, initial equipment performance records, and all station applications filed with the Commission.

72. At no time during the field agent's dealings with Mr. Niles or Zawila, or in inspecting any documents relating to KZPO, did the agent see any documents bearing Linda Ware's name or signature, or receive any other indication that she was involved in the operation of KZPO(FM). Stevens spoke with the agent on April 5, 2001, and initially stated that he was unaware that he served as chief operator for KZPO, saying that he worked for KZPO on a contract basis. When the agent informed Mr. Stevens that Zawila had said he (Stevens) was the chief operator, Stevens stated that if Zawila said he was the chief operator he was the chief operator, and had been since January 1998. Stevens further stated that the station was unattended, being operated by computer and controlled remotely by telephone. Stevens gave the investigator a private telephone number that Stevens was able to use to monitor KZPO remotely.⁵⁶ However, there were no copies of written designations, agreements, contracts, or understandings for Stevens as chief operator available for inspection, as required by Sections 73.1225(c)(2) and 73.1226(c)(4) of our Rules.⁵⁷ A copy of a written designation, dated May 24, 2001 (three days after the agents' station inspection), was provided later.

73. The Commission's San Francisco Field Office released an Official Notice of Violation directed to LB May 4, 2001.⁵⁸ The Notice of Violation specified the following conditions: Failure to have an Emergency Alert System (EAS) handbook, to make appropriate entries in the EAS log, to have EAS receiving equipment in operation, to make an entry in the log explaining why the EAS tests were not received and the date and time the EAS equipment had been removed from and returned to service, to make an informal request for additional time, to monitor a second EAS source, to maintain a main studio, to make the station available for inspection, to make available for inspection the written designation of the chief operator, to maintain and make available for inspection contracts, agreements and understandings for the chief operator, to post the station license, to maintain the station power within the authorized limit, to maintain accurate EAS logs, to post the written designation of the chief operator, to maintain in the station file any agreement with the chief operator serving on a contract basis, to have the chief operator review and sign the EAS logs and to maintain the public inspection files. On May 16, 2001, the field office received a reply from Zawila, which was incomplete or non-responsive in virtually all respects.

⁵⁶ The field agent subsequently telephoned this number and was able to hear a radio station.

⁵⁷ 47 C.F.R. §§ 73.1225(c)(2) and 73.1226(c)(4).

⁵⁸ *Official Notice of Violation to Lindsay Broadcasting*, Ref. No: EB-01-SF-107 (EB May 4, 2001).

74. On June 21, 2001, the field office released a Continuation of Official Notice of Violation (“CNOV”) for the same items listed above except the failure to make an informal request for additional time. Response was due within 14 days of release; when none was received, the office released a Warning Notice July 3, 2001. Zawila replied to the CNOV July 17, 2001, addressing all remaining items except completion of KZPO’s wattmeter calibration and certification. However, the reply was still incomplete in the following respects:

- There was no explanation of the failure of KZPO to have EAS equipment in operation for over one year;
- The reply did not set forth the dates EAS equipment was removed from and returned to service;
- There was no evidence showing that Ken Niles was employed by Linda Ware d/b/a Lindsay Broadcasting, and no showing that KZPO was in compliance with the main studio staffing requirements set forth in *Jones Eastern of the Outer Banks, Inc.*,⁵⁹
- The reply did not contain a calibration report or certification for the wattmeter on KZPO’s RF power amplifier, indicating that it was now reading properly or indicating that KZPO was not operating above its allowed output power; and
- Statements in the reply concerning KZPO’s maintenance of EAS logs were insufficient to explain discrepancies between manual and automatic (i.e., computerized) EAS logs produced by Zawila and Ken Niles.

The reply also appears to lack candor as to the designation of a chief operator, in that the alleged chief operator, Mr. Jay Stevens, stated to an FCC agent that prior to the station inspection he was unaware that he was so designated, and the written designation of chief operator was dated after Commission agents inspected KZPO.

75. On January 25, 2002, the Audio Division wrote a letter to LB in care of Zawila (whose address is LB’s address of record with the Commission), detailing the above findings, and providing LB an opportunity to submit any exculpatory or explanatory information regarding this potentially disqualifying misconduct. On February 22, 2002, Zawila, on behalf of LB, requested a 30-day extension of time in which to respond, which the Audio Division granted. On March 26, 2002, LB requested a further extension of time to respond. LB requested a further 30-day extension of time by letter dated April 29, 2002, and 20-day extensions of time by letters dated May 28, 2002, June 18, 2002, July 8, 2002, July 28, 2002, August 19, 2002, September 9, 2002, September 30, 2002, October 21, 2002, November 10, 2002, December 1, 2002. To date, LB has not responded to the staff’s January 25, 2002, letter, except as noted below.

76. In his letter of March 26, 2002, Zawila (on behalf of LB) stated that “the principal of Lindsay Broadcasting, Linda Ware, is deceased,” and enclosed a “Statement of Cynthia Ramage,” who stated under penalty of perjury that she is the executor of Ms. Ware’s estate, and is “currently involved in assembling information” to respond to the staff’s January 25, 2002, letter. Ms. Ware’s death had not previously been reported to the Commission, and no date of death was given. LB has not filed an application to transfer control of KZPO to the executor of Ms. Ware’s estate.

77. To his letter of December 31, 2002, Zawila (on behalf of LB) attached a copy of a December 18, 1998, Declaration of Linda Ware. In her Declaration, Ms. Ware stated that Zawila was her

⁵⁹ 6 FCC Rcd 3615 (1991), *clarified*, 7 FCC Rcd 6800 (1992), *liability aff’d*, 10 FCC Rcd 3759 (1995).

attorney at all times since the initial filing of the KZPO application, and that Zawila at all times acted with Ware's express authorization and knowledge in preparing and filing all KZPO documents; that Ware was at all times the real party in interest in connection with KZPO; that Soho had been "attempting to coerce" Ware into selling KZPO to Soho for almost two years; that Soho had some of Ware's medical records in her possession and used those records as an excuse to contact Ware but then refused to return the records; that Soho "commenced a campaign of sexual harassment, intimidation, and coercion against" Ware, and threatened Ware if she would not sell KZPO to Soho; that Soho filed "frivolous and abusive" lawsuits against Ware in Oregon and California and complaints against KZPO to the Commission, and that those lawsuits and complaints contained "numerous false allegations"; that Ware reported Soho's actions "to the police department" and also complained to the Medical Board of California in an effort to recover her medical records; that Ware utilized Zawila's address as her return address in her Medical Board complaint on advice from the police and her attorney; and that Ware's "local police department" advised her that "Soho fits the profile of a typical stalker and a predator and that [Ware] should take all precautions to protect [her] safety and the safety of [her] family." Attached to Ware's declaration were copies of a February 27, 1998, letter from Ware to the Medical Board of California, and March 13, 1998, and March 30, 1998, letters from the Medical Board of California to Ware. Ware's Declaration was signed under penalty of perjury and notarized.

F. KKFO(AM)

78. The staff approved assignment of the KKFO license from KOLI Broadcasters, Inc. to WPBI June 10, 1985.⁶⁰ Zawila is an officer and 100% shareholder of WPBI. According to the California Secretary of State's Corporations database, WPBI's corporate privileges are currently suspended, and it is thus unable to transact business. WPBI filed an application for renewal of license ("Renewal Application") August 4, 1997, signed by Zawila.⁶¹

79. The staff did not grant the Renewal Application, due to questions regarding KKFO's operational status. On September 15, 1995, Zawila wrote the Commission to advise that KKFO had gone off the air, due to a dispute between WPBI and the City of Coalinga (the "City") over the KKFO transmitter/antenna site, which was located at a waste treatment facility owned by the City. Subsequently, Zawila represented that the eviction was due to "redevelopment plans for the City of Coalinga which required the KKFO(AM) site for other purposes."⁶²

80. On August 9, 1996, the staff granted WPBI STA for 90 days to remain silent.⁶³ In the letter granting STA the staff cautioned that, if KKFO did not return to the air by February 8, 1997, its license would expire as a matter of law.⁶⁴

⁶⁰ File No. BAL-19850426FC.

⁶¹ File No. BR-19970804YJ.

⁶² *Letter from William L. Zawila to Secretary, Federal Communications Commission* ("Secretary") (Sept. 11, 2000).

⁶³ *Letter to William L. Zawila, Esq.*, Ref. No. 1800B3-GDG/SML (MMB Aug. 9, 1996).

⁶⁴ The effective date of Section 403(l) of the Telecommunications Act of 1996, codified in 47 U.S.C. § 312(g) and 47 C.F.R. § 73.1740(c), was February 8, 1996, thus any station silent for twelve consecutive months from February 8, 1996 or thereafter automatically expires at 12:01 a.m. on February 9, 1997, or on the day following the 12-month period of silence. See *Implementation of Section 403(l) of the Telecommunications Act of 1996*, 11 FCC Rcd 16599 (1996).

81. On January 14, 1997, WPBI filed a request for STA to operate with reduced facilities, along with a petition for expedited consideration. WPBI proposed to operate from a site at coordinates 36 degrees 7 minutes 47 seconds north latitude, 120 degrees 22 minutes 30 seconds west longitude, using 60 watts effective radiated power and a special, short antenna for temporary use. The staff granted STA to use the reduced facilities January 22, 1997, for a 180-day period ending July 22, 1997.⁶⁵ Thereafter, on February 6, 1997, WPBI notified the Commission that it had returned to the air that day.⁶⁶ WPBI requested an extension of STA September 5, 1997;⁶⁷ however, since STA had already expired, the staff reinstated STA October 16, 1997 for a period ending April 10, 1998.⁶⁸ WPBI did not seek further extension of this STA until March 5, 1999, as discussed below.

82. WPBI filed the Renewal Application August 4, 1997.⁶⁹ On November 17, 1997, Soho timely filed a Petition to Deny the Renewal Application, alleging that she (Soho) had obtained the temporary equipment for KKFO and that, “William Zawila placed the STA operation on the air for about eight hours and then turned it off. William Zawila did not bother to inform the Commission that the station went silent again.”⁷⁰ On October 23, 1998, Soho filed a “Petition to Cancel KKRO(AM) (sic) License,” repeating these allegations and further alleging that KKFO had been off the air for over twelve consecutive months, and thus that its license should have expired under Section 312(g) of the Act.⁷¹ To date we have received no response from WPBI to Soho’s allegations.

83. In a letter dated March 5, 1999, Zawila (on behalf of WPBI) represented that KKFO was then silent due to “a series of acts of vandalism, sabotage, theft of equipment, and equipment failure,” and requested STA using the same reduced facilities it had previously utilized.⁷² Zawila also represented that the previously alleged redevelopment plans for KKFO’s original site had been shelved, and further stated that political changes in the city government resulted in a city council that “appears to favor” the return of WPBI to the original KKFO site.⁷³ In an amendment to WPBI’s March 5 request, on March 28, 1999, Zawila informed the Commission that KKFO had been silent since April 10, 1998.⁷⁴ Based upon Zawila’s representations, the staff reinstated and extended STA April 1, 1999, with the STA to expire

⁶⁵ *Letter to William L. Zawila, Esq.* (MMB Jan. 22, 1997).

⁶⁶ *Letter from George Smith, Pacific Radio Engineering, to Secretary* (Feb. 6, 1997).

⁶⁷ *Letter from William L. Zawila, Esq. to Secretary* (Sept. 5, 1997).

⁶⁸ *Letter to William L. Zawila, Esq.* (MMB Oct. 16, 1997).

⁶⁹ *See supra* note 61.

⁷⁰ Petition to Deny, ¶ 4. Soho, a resident of Klamath Falls, Oregon, did not demonstrate standing to petition to deny the KKFO license renewal. Therefore, we consider her pleading as an informal objection.

⁷¹ 47 U.S.C. §312(g). *See* Petition to Cancel the License of KKRO(AM) (sic) Because the Station Was Off the Air for More Than One Year, ¶ 3.

⁷² *Letter from William L. Zawila to Secretary* (Mar. 5, 1999).

⁷³ *Id.*

⁷⁴ *Letter from William L. Zawila to Secretary* (Mar. 28, 1999). Zawila represented that KKFO’s only broadcast activity from April 10, 1998 to March of 1999 had been equipment tests conducted April 19, April 26, and May 3, 1998. In the staff letter reinstating STA (*see infra* note 75), the staff informed Zawila that equipment tests are not considered as “broadcast signals” under 47 U.S.C. § 312.

July 1, 1999.⁷⁵ The staff granted a further STA extension August 20, 1999, which expired November 20, 1999.⁷⁶ This further extension was based on Zawila's representation that KKFO had been broadcasting since April 5, 1999.⁷⁷

84. Subsequently, on September 11, 2000, Zawila wrote on behalf of WPBI to request STA with the same temporary facilities that the staff first granted in 1997.⁷⁸ In his September 11 letter, Zawila recounted meetings, during the fall of 1999 and the spring and summer of 2000, between WPBI and various officials of the City, whom he described as "enthusiastic about the prospect of returning KKFO(AM) to its permanent licensed site so that full radio service could be restored to Coalinga from KKFO(AM)." Zawila further represented that WPBI submitted documents to the City at its request. After alleging various difficulties encountered by the City, Zawila stated that "Western Pacific has finally obtained staff approval of its application for its conditional use permit for its site," but that additional hearings and approvals remained. Finally, Zawila represented that KKFO was silent, having last transmitted broadcast signals November 20, 1999, but being forced off the air because of "technical problems due to vandalism."⁷⁹

85. In a letter dated October 30, 2000, the staff stated that it could not reinstate STA for KKFO, due to the lapse of almost one year since it expired.⁸⁰ The Audio Division staff did, however, grant new STA to permit KKFO to operate with the same reduced facilities as before through April 30, 2001, noting that KKFO would have to return to the air no later than November 20, 2000, or its license would expire as a matter of law. The staff letter also contained the following admonition:

We will closely monitor WPBA's (sic) operation under STA pending restoration of licensed operation. **Failure to maintain service to the community of license pending the restoration of licensed operation may result in cancellation of STA and/or the initiation of proceedings directed toward revocation of the station's license.**⁸¹

86. Commission records contain no notification from WPBI that KKFO returned to the air prior to November 20, 2000. On March 19, 2001, a Commission field agent traveled to Coalinga, California, to monitor KKFO's operation. Monitoring of KKFO's frequency, 1470 kHz, revealed that the station was not broadcasting. Inspection of the original, licensed site for KKFO showed only a building and foundation for the former antenna. The agent then visited the temporary site authorized by STA, finding only an open grass field 20 meters north of West Lucille Avenue in Coalinga, approximately 0.3 miles west of California Highway 198. There was no antenna, transmitter, studio, or foundation of any kind at the site or within a 200-meter radius of the site, nor any evidence that broadcasting facilities had ever been located there.⁸²

⁷⁵ *Letter to William L. Zawila, Esq.* (MMB Apr. 1, 1999).

⁷⁶ *Letter to William L. Zawila, Esq.* (MMB Aug. 20, 1999).

⁷⁷ *Letter from William L. Zawila to Secretary* (June 29, 1999).

⁷⁸ *Letter from William L. Zawila to Secretary* (Sept. 11, 1999).

⁷⁹ *Id.*

⁸⁰ *Letter to William L. Zawila, Esq.* (MMB Oct. 30, 2000).

⁸¹ *Id.* (boldface emphasis in original).

⁸² The only structure in the area is a horse stable across West Lucille Avenue to the south of the site.

87. Further investigation, including interviews with officials of the City, revealed that WPBI was evicted from its licensed site in 1995 due to its failure to make required lease payments, and not due to redevelopment plans. The agent also learned that in November of 2000, the City passed a resolution granting a conditional use permit for the construction of a radio antenna and transmitter, but that it had had no discussions with Zawila or other representatives of WPBI in this regard. Rather, the City had negotiated since July of 1999 with an individual named Mr. Steven Fuss, owner of 142U, Inc. One City official stated that he asked Mr. Fuss in a City Council meeting whether he had any connection with Zawila, as the City had concerns about dealing with Zawila after having evicted WPBI from its licensed site. According to the official, one of the conditions of leasing the site to Mr. Fuss was that he submit corporate documents showing that he had no connection or association with Zawila.

88. The field agent contacted Zawila after the attempted site visit, and Zawila stated to the agent that WPBI had been evicted by the City in 1995 because of the City's plan to build a golf course on the site. Zawila also indicated that KKFO had operated at a temporary site under STA, but that it was not currently doing so, and he did not have specific dates when it operated at the temporary site. Zawila also stated that he had obtained a permit from the City to rebuild KKFO's facilities at the original, licensed site, and that they would be constructed in four to six weeks from March 21, 2001.

89. On March 26, 2001, an agent from the Los Angeles Field Office interviewed Zawila at his office in Garden Grove, California, as Zawila had told the field agent who attempted inspection of KKFO that the public file was located at his office. The agent inspected the KKFO public file in Zawila's office, but the only documents in the file dated after 1990 were a document dated July 3, 1997, concerning license renewal and a letter from the Commission regarding the grant of STA.

90. In the March 26, 2001, interview, Zawila could not specify the dates KKFO was on the air, and could not identify the owner of the site from which KKFO allegedly broadcast under STA. Zawila further stated that the KKFO equipment was in storage in Garden Grove, California; that he did not have Emergency Alert System ("EAS") logs for KKFO; and that he had no relationship with Mr. Fuss other than that Fuss was going to execute a local marketing agreement for KKFO and that Zawila planned to sell the station to him within six months. Zawila said he was aware that Mr. Fuss had received a "conditional lease permit" from the City of Coalinga to relocate KKFO at its original site. When asked where the KKFO main studio was located, Zawila would only state that the station is not on the air.

91. On May 18, 2001, in response to an April 18, 2001 letter of inquiry from the Commission's San Francisco Field Office, Zawila submitted facsimile responses to the field office. In those responses, Zawila stated that KKFO's STA facilities consisted of "small portable equipment that was installed on and in a motorhome with its own power source," and that "[t]he main studio for KKFO(AM) was located in the motorhome and the transmission system for KKFO(AM) was located on and in the motorhome." He further stated that he had obtained permission in January of 1997 from Henry Cole, "location unknown," to use the STA site. Zawila also attached to his response an undated Designation of Chief Operator, designating himself as Chief Operator and signed by him as General Manager of KKFO. The "Radio Station KKFO" letterhead on the Designation has the address of 12550 Brookhurst Street, Suite A, Garden Grove, California 92640, which is the address of Zawila's law office.

92. In his May, 2001, responses, Zawila also stated that the KKFO public inspection file was located in KKFO's main studio at 152 E. Elm Street, Coalinga, California, until the station was evicted from its transmitter site by the City in 1995. Thereafter, according to the response, the public file was maintained at the STA location, with a duplicate copy in Zawila's office in Garden Grove. Zawila did not state the whereabouts of either the public file or the main studio from the time of WPBI's eviction by the City in 1995 until permission to use the STA site was granted in January of 1997.

93. Zawila responded to inquiries regarding the location of KKFO's temporary equipment, and monitoring procedures and monitoring schedules for KKFO, that "[t]he KKFO(AM) STA equipment is located at 12550 Brookhurst Street, Suite A, Garden Grove, California," that the equipment "is located at the main studio where the equipment is under constant surveillance by the operator who is the same room (sic) with the equipment," and that the STA equipment "is inspected on a daily basis to be sure that it is operating within proper parameters." The wording of these responses suggested that the station is currently being operated from Zawila's office.⁸³ Zawila also attached to his responses documents "reflecting equipment used in the KKFO(AM) STA operation." The documents attached consisted only of manuals for the purported STA antenna, antenna tuning unit, and transmitter for KKFO; he provided no evidence that this equipment was actually purchased, installed, or used.⁸⁴

94. On January 25, 2002, the Audio Division wrote a letter to WPBI in care of Zawila (whose address is WPBI's address of record with the Commission), detailing the above findings, and providing WPBI an opportunity to submit any exculpatory or explanatory information regarding this potentially disqualifying misconduct, including the Division's tentative conclusion that KKFO's license had expired due to its failure to transmit broadcast signals for over 12 consecutive months. On February 22, 2002, Zawila, on behalf of WPBI, requested a 30-day extension of time in which to respond, which the Audio Division granted. On March 26, 2002, WPBI requested a further extension of time to respond. WPBI requested a further 30-day extension of time by letter dated April 29, 2002, and 20-day extensions of time by letters dated May 28, 2002, June 18, 2002, July 8, 2002, July 28, 2002, August 19, 2002, September 9, 2002, September 30, 2002, October 21, 2002, November 10, 2002, December 1, 2002. To date, WPBI has not responded to the staff's January 25, 2002, letter, except as noted below.

95. In his letter of March 26, 2002, Zawila (on behalf of WPBI) attached documents that he contends "demonstrate that KKFO(AM) was not evicted for non-payment of rent." The attached documents consisted of the following:

(a) A "Declaration of Dorothy Ingham [Finance Director for the City of Coalinga] in Support of Motion for Summary Judgment by Plaintiff [City of Coalinga] on Plaintiff's Complaint for Unlawful Detainer," dated August 18, 1995, and bearing the caption of the case City of Coalinga v. Coalinga Broadcasting Company, Inc., a California Corporation, d/b/a Radio Station KKFO AM 1470, Case No. C95000095-0, in the Central Valley Municipal Court, Coalinga Division. Ms. Ingham, in the Declaration, states under penalty of perjury that "[e]ver since April 1, 1995, the City has refused to accept any and all lease payments which defendant has attempted to

⁸³ To the extent that this response implies that KKFO is presently being operated from Zawila's law offices in Garden Grove, California, this would constitute unauthorized operation in violation of 47 U.S.C. § 301, as well as a further violation of 47 C.F.R. § 73.1125. However, inspection of the purported KKFO STA equipment in June 2001 showed that it was not being operated.

⁸⁴ Mr. George Smith of Pacific Radio Engineering ("PRE"), who was the technical consultant for WPBI's January 1997 request for STA, stated to an agent of the Commission's San Francisco Field Office that the STA antenna, which was purchased from PRE, was never paid for and never installed. Mr. Smith also stated that the antenna could not have been installed by amateurs, as it would have required a crane, and that "Henry Cole," the purported owner of the STA site, was in reality a legal assistant in Zawila's law office. Field agents from the Los Angeles office inspected what Zawila represented as the STA equipment in his office on June 7, 2001. They were shown a transmitter, an antenna tuning unit, an approximately 30-foot telescoping antenna without ground radials (that the agents believed could be erected by two people without a crane), and a box of cable. No studio or other equipment was presented for inspection.

tender, considering defendant to be nothing more than a trespassing tenant illegally holding over on the premises.”

(b) A letter dated June 30, 1995, from Dotty Ingham, Finance Director, City of Coalinga, to “Coalinga Broadcasting Company, Inc., KKFO,” care of Zawila’s address. In the letter, it is stated that the City is returning a \$25.00 check for KKFO tower rent, received June 28, 1995, “because your lease expired February 28, 1995.”

(c) An Invoice from the City of Coalinga to “Coalinga Broadcasting Co., Inc.” at Zawila’s address, dated May 3, 1995, indicating a balance owed of \$14.70, an April 10 payment of \$50.00, and an April 30 charge of \$14.70 for “Tower Rent,” leaving a credit balance of \$20.60.

The March 26, 2002, letter did not address the issue of KKFO’s being silent for over twelve consecutive months, nor did any subsequent letter submitted by WPBI.

DISCUSSION

96. *Misrepresentation / Lack of Candor (KNGS, KAAX, KAJP, KZPE, KZPO, KKFO):* We believe there is a substantial and material question of fact as to whether Zawila possesses the requisite character qualifications to be or remain a Commission licensee. The “trait of truthfulness” is a key element of character necessary to operate a broadcast station in the public interest.⁸⁵ Here, we find there is a substantial and material question of fact as to whether Zawila has misrepresented or lacked candor with respect to material facts before the Commission. A misrepresentation is a false statement of fact made with intent to deceive the Commission.⁸⁶ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive the Commission.⁸⁷ “A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.”⁸⁸ Fraudulent intent can be found from “the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity.”⁸⁹ In addition, “intent can also be found from motive.”⁹⁰

97. We find there is a substantial and material question of fact as to whether Zawila, on his own behalf and on behalf of the permittees and licensees referenced herein, made the following false statements of fact to the Commission:

(a) That the site at which KNGS was permitted was available, was privately owned, and that Michael McKenna was the owner’s agent, when it appears the site was and is owned by BLM and Zawila had no authority to locate or operate KNGS at that site;

⁸⁵ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 F.C.C.2d 1179, 1210 (1986) (“*Character Policy Statement*”).

⁸⁶ *Fox River Broadcasting, Inc.*, 93 F.C.C.2d 127, 129 (1983).

⁸⁷ *Id.*

⁸⁸ *Trinity Broadcasting of Florida, Inc.*, 10 FCC Rcd 12020, 12063 (1995).

⁸⁹ *David Ortiz Radio Corp. v. F.C.C.*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. F.C.C.*, 636 F.2d 454, 462 (D.C. Cir. 1980)).

⁹⁰ *Joseph Bahr*, 10 FCC Rcd 32, 33 (Rev. Bd. 1994).

- (b) That the KNGS facilities were constructed as authorized in its construction permit, when it appears that the KNGS antenna was mounted on a pole at a height much lower than permitted, and that would not provide sufficient community signal coverage;
- (c) That the KNGS main studio complied with Section 73.1125 of the Rules, when it appears there was no main studio for KNGS;
- (d) That the 91-meter KNGS / KAAX tower was erected and subsequently “destroyed by vandalism,” when it appears that the tower was never erected or destroyed;
- (e) That the 91-meter KNGS / KAAX tower was constructed by Kunec Engineering, and the production of a contract and invoice for same, when it appears there was no business named “Kunec Engineering,” and that the purported principal of that business did not have the capability of erecting such a tower;
- (f) That the alleged “emergency operation” of KNGS was reported to the Commission, when it appears that there was no such report;
- (g) That the facilities of KAJP as constructed consisted of a 26-meter pole at the authorized transmitter site, when it appears that the KAJP antenna was mounted to a pole attached to a balcony at a slightly different location and at a substantially lower height;
- (h) That the 26-meter KAJP pole had been erected and used by KAJP from the time of filing its license application until February 2001, when it appears that the station was only operated from June, 2000, until February, 2001;
- (i) That KAJP was operating under program test authority from August 1999 through January 2001, when it does not appear to have begun operating until June, 2000;
- (j) That station KZPE had a main studio located at its transmitter site, in compliance with Section 73.1125 of the Rules, when it appears there was no main studio for KZPE;
- (k) That station KZPO’s main studio was located at its transmitter site, when it appears the studio had at least two different locations, neither of which was reported to the Commission;
- (l) That WPBI had been evicted from KKFO’s original, licensed site due to the City of Coalinga’s plans to redevelop the site or build a golf course there, when it appears that WPBI was evicted for failure to pay rent;
- (m) That KKFO was operating under Special Temporary Authority from February 6, 1997 to April 8, 1998, and from April 5, 1999 to November 20, 1999, when it appears that a substantial and material question exists as to whether KKFO was operating at all during these periods;
- (n) That Zawila, on behalf of WPBI, had been in negotiations with the City of Coalinga to return KKFO to its original licensed site in 1999 and 2000, when it appears that the City of Coalinga was in negotiations at that time with a third party unrelated to Zawila; and
- (o) That KKFO is currently operating with STA equipment located at 12550 Brookhurst Street, Suite A, Garden Grove, California, which equipment is constantly monitored by the operator, when at the time Commission field agents inspected the equipment, it was not being operated.

98. The evidence shows that Zawila believed the construction permits for stations KNGS, KAAX, KAJP, and KZPE were about to expire unless the facilities were constructed. Zawila therefore had motive to misrepresent to the Commission that the stations of which he was a principal or that he represented were constructed according to their permits. The evidence further shows that KKFO did not have a site after eviction by the City of Coalinga, and that Zawila had motive to misrepresent the station's operational status to avoid loss of its license. Accordingly, we shall specify issues as to whether Zawila and/or the stations' principals violated Section 312(a)(1) of the Act⁹¹ or Section 73.1015 of our Rules⁹² and as to whether the KNGS, KAAX, and KAJP construction permits should be canceled, the KZPO license should be revoked, and the KKFO renewal application should be denied.

99. *Unauthorized Transfer of Control / Real Party in Interest (KZPE, KZPO)*: We also find there is a substantial and material question of fact whether Zawila and/or Stevens had assumed control over stations KZPE and KZPO, and/or were the real parties in interest in the KZPE license application. The Commission evaluates real party in interest allegations concerning an application as it does those concerning *de facto* control of a permittee or licensee.⁹³ While there is no exact formula for evaluating whether a party is in *de facto*, or actual control,⁹⁴ we look to whether a new person or entity has obtained the right to determine the basic operating policies of the station, that is, to affect decisions concerning the personnel, programming or finances of the station.⁹⁵ A permittee or licensee may delegate certain functions on a day-to-day basis to an agent or employee,⁹⁶ but delegations must be guided by policies set by the permittee or licensee.⁹⁷

100. The evidence adduced indicates that Zawila is in control of KZPE and KZPO; that the addresses of record for the permittees of both stations are Zawila's office in Garden Grove, California; and that there is no evidence that either H.L. Charles or Linda Ware had any operational control at any time over either facility and, in the case of KZPE, that the permittee had any operational role. Given the totality of the evidence, we find there is a substantial and material question of fact as to whether H.L. Charles and Linda Ware have abdicated ultimate control over KZPE and KZPO to Zawila. Thus, we shall specify issues regarding whether Zawila has assumed control of KZPE or KZPO without Commission authorization, or is the real party in interest behind the KZPE License Application.

101. *Technical and other rule violations (KNGS, KAAX, KAJP, KZPO, KZPE, and KKFO)*: Reliability is the other key element of character necessary to operate a broadcast station in the public interest.⁹⁸ In this regard, the Commission is concerned with whether a licensee will in the future operate its station consistent with the requirements of the Communications Act of 1934, as amended, and the

⁹¹ 47 U.S.C. § 312(a)(1).

⁹² 47 C.F.R. § 73.1015.

⁹³ *Univision Holdings, Inc.*, 7 FCC Rcd 6672, 6675 (1992), *recon. denied*, 8 FCC Rcd 3931 (1993).

⁹⁴ *See, e.g., Stereo Broadcasters, Inc.*, 55 F.C.C.2d 819, 821 (1975), *modified*, 59 F.C.C.2d 1002 (1976).

⁹⁵ *See WHDH, Inc.*, 17 F.C.C.2d 856 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

⁹⁶ *See, e.g., Southwest Texas Public Broadcasting Council*, 85 F.C.C.2d 713, 715 (1981).

⁹⁷ *See David A. Davila*, 6 FCC Rcd 2897, 2899 (1991).

⁹⁸ *See Character Policy Statement*, 102 F.C.C.2d at 1209-1210.

Commission's rules.⁹⁹ As set forth in detail above, it appears that Zawila has operated KNGS, KAAX, KAJP, KZPO, KZPE, and KKFO substantially at variance from the terms of their authorizations for three years or more (in the case of KZPO and KKFO), and has committed numerous other violations of the Commission's rules. The seriousness and duration of these violations, together with Zawila's failure to take corrective action despite warnings from Commission staff, raise questions as to whether Zawila can be relied upon in the future to operate the stations in accordance with the Communications Act and the Commission's rules. The Commission has designated issues for "willful and repeated" violations of our legal and technical requirements.¹⁰⁰ Additionally, we have specified issues where "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules."¹⁰¹

102. Section 73.1125 of our Rules provides that a broadcast station shall maintain a main studio, and shall maintain a local telephone number in its community of license or a toll-free number. Additionally, a radio station must maintain a meaningful management and staff presence at the main studio during regular business hours.¹⁰² Based on the Commission's investigation, it does not appear that a main studio was ever constructed for KNGS, KAAX, or KZPE. Moreover, it appears that KKFO(AM) did not have a main studio for several years. With regard to KAJP and KZPO, the main studios do not appear to have been properly staffed. Accordingly, we will specify issues to determine whether Zawila, AES, CVES, LB, FCB, or WPBI willfully or repeatedly operated KNGS, KAAX, KAJP, KZPO, KZPE, and KKFO at variance from the terms of their authorizations in violation of Section 73.1125 of the Rules.

103. Sections 73.3526(b) and 73.3526(e) of our Rules require all permittees and licensees to maintain a public inspection file in their station's main studio, and to keep certain required documents in the public inspection file. Based on Commission investigation, it does not appear that KNGS, KAAX, KAJP, KZPO, KZPE, and KKFO maintained complete public inspection files in their main studios. We will therefore specify issues to determine whether Zawila, AES, CVES, LB, FCB, or WPBI willfully or repeatedly failed to maintain proper public inspection files, in violation of Section 73.3526 of the Rules.

104. Section 17.57 of our Rules provides that the owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction, or of any change in structure height. It appears that neither Zawila nor AES notified the Commission of the alleged completion of construction of the KNGS/KAAX tower, nor of the alleged destruction of that tower and replacement with telephone poles. It also appears that CVES did not notify the Commission of the variance in height between its original tower as permitted and registered and its apparent actual height. We will specify an issue to determine whether Zawila, AES, or CVES willfully or repeatedly violated Section 17.57.

⁹⁹ *Id.*

¹⁰⁰ See, e.g., *Lewel Broadcasting, Inc.*, 86 F.C.C.2d 896 (1981); *Fred Kaysbier*, 34 F.C.C.2d 788 (1970); and cases where the licensee's station operation "was conducted in an exceedingly careless, inept and negligent manner and [where] the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *Heart of the Black Hills Stations*, 32 F.C.C.2d 196, 198 (1971).

¹⁰¹ *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

¹⁰² See *Jones Eastern of the Outer Banks, Inc.*, *supra* note 59.

105. Section 73.1690(b)(2) of our Rules requires a construction permit for any move of an antenna to another tower structure located at the same coordinates as that authorized. Commission investigation appears to establish that Zawila and AES failed to report the move of the KNGS and KAAX antennas to the “emergency” poles located at the antenna site for those stations. Investigation also appears to establish that CVES moved its antenna to another tower at the same location as the mast on which KAJP’s former, non-conforming antenna was mounted, without a construction permit for the new antenna. We will specify an issue to determine whether Zawila, AES, or CVES willfully and/or repeatedly violated Section 73.1690(b)(2).

106. Sections 11.15, 11.35(a), 11.35(c), and 11.52(d) of our Rules require a licensee to have an Emergency Alert System (EAS) handbook, to make appropriate entries in the EAS log, to have EAS receiving equipment in operation, to make an entry in the log explaining why the EAS tests were not received and the date and time the EAS equipment had been removed from and returned to service, to make an informal request for additional time in which to repair the EAS equipment, and to monitor a second EAS source. Investigation into KZPO, and the responses to the NOV and CNOV produced by Zawila for LB, raise a question of fact as to whether KZPO complied with our EAS rules. We will specify an issue to determine whether Zawila or LB willfully or repeatedly violated Sections 11.15, 11.35(a), 11.35(c), and/or 11.52(d).

107. Section 73.1800(a) of our Rules provides that each station shall maintain a station log, and Sections 73.1225(a) and (c)(5), and 73.1226(a) provide that station facilities and logs shall be made available by all broadcast stations upon request by representatives of the Commission. As noted above, KZPO did not have proper station logs available for inspection by the Commission’s investigators. Accordingly, we will specify an issue to determine whether Zawila or LB willfully or repeatedly violated Sections 73.1800(a), 73.1225(a), 73.1225(c)(5), or 73.1226(a) or our Rules.

108. Section 73.1560(b) of our Rules provides that transmitter output power of an FM broadcast station may not exceed 105% of the authorized power. Based on the agent’s inspection of the KZPO transmitter, there is a question of fact as to whether KZPO was operating at greater than 105% of authorized power. We will specify an issue to determine whether Zawila or LB willfully or repeatedly violated Section 73.1560(b).

109. Sections 73.1225(c)(2), 73.1226(c)(4), 73.1870(b)(3), and 73.1870(c)(3) of our Rules require a licensee to make available for inspection the written designation of the chief operator, to maintain and make available for inspection contracts, agreements and understandings for the chief operator, to post the written designation of the chief operator, to maintain in the station file any agreement with the chief operator serving on a contract basis, and to have the chief operator review and sign station records and logs. KZPO did not have the required designations of chief operator, either posted or in its public file, and did not designate Stevens as chief operator until after the Commission’s inspection. We will specify an issue to determine whether Zawila or LB willfully or repeatedly violated Sections 73.1225(c)(2), 73.1226(c)(4), 73.1870(b)(3), or 73.1870(c)(3).

110. Section 73.1350(a) of our Rules requires a licensee to maintain and operate its broadcast station in a manner that complies with the technical rules set forth in our Rules and in accordance with the terms of its station authorization. As detailed above, investigation appears to establish that station KZPO was not operating in accordance with our technical rules or its station authorization. We will therefore specify an issue to determine whether Zawila or LB willfully or repeatedly violated Section 73.1350(a).

111. Section 312(g) of the Communications Act of 1934¹⁰³ provides that “[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.” The facts set forth above indicate that KKFO failed to transmit broadcast signals for over 12 consecutive months, including the period from November 20, 1999 to the present. We will therefore specify an issue to determine whether the license for station KKFO automatically expired pursuant to Section 312(g).

112. Given the substantial and material questions of fact concerning Zawila’s basic character qualifications, we conclude that Zawila, AES, CVES, and FCB should be directed to show cause why the construction permits for stations KNGS(FM), KAAX(FM), KAJF(FM), and KZPE(FM) should not be revoked. Also, we conclude, again based on the substantial and material questions of fact concerning Zawila’s basic character qualifications, that Linda Ware d/b/a Lindsay Broadcasting or her successor(s) in interest should be directed to show cause why the license for station KZPO(FM) should not be revoked. Finally, we conclude that substantial and material questions of fact exist as to whether the license renewal application of WPBI for KKFO(AM) should be denied. This proceeding is intended to encompass all authorizations and applications held or filed by Zawila, AES, CVES, FCB, LB, and WPBI.

ORDERING CLAUSES

113. Accordingly, IT IS HEREBY ORDERED THAT, pursuant to Sections 312(a) and 312(c) of the Communications Act of 1934, as amended,¹⁰⁴ and Section 1.91(a) of the Rules,¹⁰⁵ William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., and H.L. Charles d/b/a Ford City Broadcasting ARE DIRECTED TO SHOW CAUSE why the construction permits for KNGS(FM), Coalinga, California; KAAX(FM), Avenal, California; KAJF(FM), Firebaugh, California; and KZPE(FM), Ford City, California, should not be REVOKED and all authority to operate said stations TERMINATED, at a hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

- (a) To determine whether William L. Zawila, individually and/or as an officer of AES and CVES, or on behalf of FCB, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the construction and/or operation of the facilities of KNGS(FM), KAAX(FM), KAJF(FM), and KZPE(FM), and in his statements in response to official Commission inquiries regarding the operation of said stations, in violation of Section 312(a)(1) of the Communications Act of 1934, as amended, and/or Section 73.1015 of the Rules;
- (b) To determine whether William L. Zawila, individually and/or as an officer of AES and CVES, or on behalf of FCB, willfully or repeatedly violated Section 73.1690(b)(2) of the Rules by moving the antennas of KNGS(FM), KAAX(FM), KAJF(FM), or KZPE(FM) to different towers without a construction permit;
- (c) To determine whether William L. Zawila, AES, CVES and/or FCB willfully or repeatedly violated Section 73.1125 of the Rules, by failing to maintain properly staffed main studios for KNGS(FM), KAAX(FM), KAJF(FM), and KZPE(FM), and by failing to have a local telephone

¹⁰³ 47 U.S.C. § 312(g).

¹⁰⁴ 47 U.S.C. §§ 312(a) and 312(c).

¹⁰⁵ 47 C.F.R. § 1.91(a).

number in the communities of license for KNGS(FM) and KAAX(FM), or toll-free telephone numbers for those stations;

(d) To determine whether William L. Zawila, AES, CVES, and/or FCB willfully or repeatedly violated Section 73.3526 of the Rules, by failing to maintain proper public inspection files for KNGS(FM), KAAX(FM), KAJF(FM), and KZPE(FM);

(e) To determine whether William L. Zawila, AES, and/or CVES willfully or repeatedly violated Section 17.57 of the Rules, by failing to notify the Commission within 24 hours of completion of construction of towers for which Antenna Registration Numbers had been assigned, or of changes in the structures' heights, for the towers on which the antennas of KNGS(FM), KAAX(FM), and KAJF(FM) were to have been mounted;

(f) To determine whether William L. Zawila was an undisclosed real party in interest in FCB's application for license, or whether William L. Zawila and/or FCB willfully or repeatedly violated Section 310(d) of the Communications Act of 1934, as amended, and/or Section 73.3540(a) of the Rules, by Zawila's assuming control of KZPE(FM) without prior Commission authorization; and

(g) To determine, in light of the evidence adduced under the foregoing issues, whether William L. Zawila, AES, CVES, and/or FCB possess the requisite qualifications to be or remain permittees of their respective radio stations.

114. IT IS FURTHER ORDERED THAT, pursuant to Section 1.91(a) of the Rules,¹⁰⁶ and Sections 312(a) and 312(c) of the Communications Act of 1934, as amended,¹⁰⁷ William L. Zawila and Linda Ware d/b/a Lindsay Broadcasting or her successor(s) in interest ARE DIRECTED TO SHOW CAUSE why the license for KZPO(FM), Lindsay, California should not be REVOKED and all authority to operate said station TERMINATED, at a hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether William L. Zawila, individually and/or on behalf of LB, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the construction and operation of the facilities of KZPO(FM), and in his statements in response to official Commission inquiries regarding the operation of said station, in violation of Section 312(a)(1) of the Communications Act of 1934, as amended, and/or Section 73.1015 of the Rules;

(b) To determine whether William L. Zawila and/or LB willfully or repeatedly violated Section 310(d) of the Communications Act of 1934, as amended, and/or Section 73.3540(a) of the Rules, by Zawila's assuming control of KZPO(FM) without prior Commission authorization;

(c) To determine whether Zawila and/or LB willfully or repeatedly violated Sections 11.15, 11.35(a), 11.35(c), and 11.52(d) of the Rules, by failing to maintain proper EAS equipment and proper EAS logs;

¹⁰⁶ 47 C.F.R. § 1.91(a).

¹⁰⁷ 47 U.S.C. §§ 312(a) and 312(c).

- (d) To determine whether William L. Zawila and/or LB willfully or repeatedly violated Section 73.1125 of the Rules by failing to maintain a properly staffed main studio for KZPO(FM);¹⁰⁸
- (e) To determine whether Zawila and/or LB willfully or repeatedly violated Sections 73.1800(a), 73.1225(a), 73.1225(c)(5), and 73.1226(a) of the Rules, by failing to maintain station logs and to make station logs and facilities available on request for inspection by the Commission;
- (f) To determine whether Zawila and/or LB willfully or repeatedly violated Section 73.1560(b) of the Rules, by operating station KZPO(FM) at a transmitter output power greater than 105% of authorized power;
- (g) To determine whether Zawila and/or LB willfully or repeatedly violated Sections 73.1225(c)(2), 73.1226(c)(4), 73.1870(b)(3), and 73.1870(c)(3) of the Rules, by failing to maintain and make available for inspection records pertaining to the chief operator of station KZPO(FM), to post the written designation of chief operator, to maintain in the public inspection file agreements with the chief operator, and to have the chief operator review and sign station records and logs;
- (h) To determine whether Zawila and/or LB willfully or repeatedly violated Section 73.1350(a) of the Rules, by failing to maintain and operate KZPO(FM) in a manner that complies with the technical rules set forth in our Rules and in accordance with its station authorization; and
- (i) To determine, in light of the evidence adduced under the foregoing issues, whether William L. Zawila and/or LB possess the requisite qualifications to be or remain licensees of KZPO(FM).

115. IT IS FURTHER ORDERED THAT, pursuant to Section 309(e) of the Communications Act of 1934, as amended,¹⁰⁹ the application for renewal of license for KKFO(AM), Coalinga, California, File No. BR-19970804YJ, is designated for hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

- (a) To determine whether William L. Zawila, individually and/or on behalf of WPBI, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the operation of the facilities of KKFO(AM), and in his statements in response to official Commission inquiries regarding the operation of said station, in violation of Section 312(a)(1) of the Communications Act of 1934, as amended, and/or Section 73.1015 of the Rules;
- (b) To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated Section 73.1125 of the Rules, by failing to maintain properly staffed main studios for KKFO(AM);
- (c) To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated Sections 73.1800(a), 73.1225(a), 73.1225(c)(5), and 73.1226(a) of the Rules, by failing to maintain station logs and to make station logs available on request for inspection by the Commission, by failing to make KKFO(AM) available for inspection by representatives of the

¹⁰⁸ See *supra* note 59. See also *Coffee County Broadcasting, Inc.*, 18 FCC Rcd 1033 (EB 2003).

¹⁰⁹ 47 U.S.C. §§ 312(a) and 312(c).

Commission during the station's business hours, and by failing to provide records and information to Commission representatives upon request;

(d) To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated Section 73.1740(a)(4) of the Rules, by failing to notify the Commission not later than the tenth day of limited or discontinued operation that KKFO(AM) was not adhering to a minimum operating schedule, or by failing to make an informal written request for such additional time as may be necessary to restore the minimum operating schedule;

(e) To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated Section 73.3526 of the Rules, by failing to maintain a complete public file at the main studio of KKFO(AM) or at an accessible place in the community of license, which is available for public inspection at any time during regular business hours;

(f) To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated Section 73.1590 of the Rules, by failing to make equipment performance measurements upon installation of a new or replacement main transmitter, and annually thereafter;

(g) To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated Section 73.1350(a) of the Rules, by failing to maintain and operate KKFO(AM) in a manner that complies with the technical rules set forth in our Rules and in accordance with its station authorization;

(h) To determine whether station KKFO(AM) failed to transmit broadcast signals for a period of over twelve consecutive months, thus causing expiration of its license under Section 312(g) of the Act¹¹⁰ and Section 73.1740(c) of the Rules; and

(i) To determine, in light of the evidence adduced under the foregoing issues, whether the license for KKFO(AM) has expired pursuant to Section 312(g) of the Act and Section 73.1740(c) of the Rules, or whether William L. Zawila and/or WPBI possess the requisite qualifications to be or remain licensees of KKFO(AM).

116. IT IS FURTHER ORDERED that, pursuant to Section 312(d) of the Act,¹¹¹ and Section 1.91(d) of the Rules,¹¹² the burden of proceeding with the introduction of evidence and the burden of proof shall be on the Commission's Enforcement Bureau as to the issues set forth in paragraphs 113-114 herein.

117. IT IS FURTHER ORDERED that, pursuant to Section 309(e) of the Act,¹¹³ the burden of proceeding with the introduction of evidence and the burden of proof shall be on WPBI as to the issues set forth in paragraph 115 herein.

¹¹⁰ *Id.* § 312(g).

¹¹¹ *Id.* § 312(d).

¹¹² 47 C.F.R. § 1.91(d).

¹¹³ 47 U.S.C. § 309(e).

118. IT IS FURTHER ORDERED that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to Section 503(b)(3)(A) of the Act,¹¹⁴ and Section 1.80 of the Rules,¹¹⁵ whether an Order of Forfeiture in an amount not to exceed three hundred thousand dollars (\$300,000) shall be issued against Zawila, AES, and/or CVES, for willfully and/or repeatedly violating Sections 73.1015, 73.1350(a), 73.1560(a), 73.1560(b), 73.1690(b)(2), 73.1125, 73.3526, and/or 17.57 of the Rules.

119. IT IS FURTHER ORDERED that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to Section 503(b)(3)(A) of the Act,¹¹⁶ and Section 1.80 of the Rules,¹¹⁷ whether an Order of Forfeiture in an amount not to exceed three hundred thousand dollars (\$300,000) shall be issued against Zawila and/or FCB, for willfully and/or repeatedly violating Sections 73.1015, 73.3540(a), 73.1350(a), 73.1560(a), 73.1560(b), 73.1690(b)(2), 73.1125, 73.3526, and/or 17.57 of the Rules.

120. IT IS FURTHER ORDERED that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to Section 503(b)(3)(A) of the Act,¹¹⁸ and Section 1.80 of the Rules,¹¹⁹ whether an Order of Forfeiture in an amount not to exceed three hundred thousand dollars (\$300,000) shall be issued against Zawila and/or LB, for willfully and/or repeatedly violating Sections 73.1015, 73.3540(a), 11.15, 11.35(a), 11.35(c), 11.52(d), 73.1800(a), 73.1125, 73.1225(a), 73.1225(c)(5), 73.1226(a), 73.1560(b), 73.1225(c)(2), 73.1226(c)(4), 73.1870(b)(3), and/or 73.1870(c)(3) of the Rules.

121. IT IS FURTHER ORDERED that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to Section 503(b)(3)(A) of the Act,¹²⁰ and Section 1.80 of the Rules,¹²¹ whether an Order of Forfeiture in an amount not to exceed three hundred thousand dollars (\$300,000) shall be issued against Zawila and/or WPBI, for willfully and/or repeatedly violating Sections 73.1015, 73.1125, 73.1800(a), 73.1225(a), 73.1225(c)(5), 73.1226(a), 73.1740(a)(4), 73.3526, 73.1590, 73.1225, 73.1350(a), and 73.1740(c) of the Rules.

122. IT IS FURTHER ORDERED that, in connection with the possible forfeiture liability noted above, this document constitutes notice of an opportunity for hearing, pursuant to Section 503(b)(3)(A) of the Act and Section 1.80 of the Rules.

123. IT IS FURTHER ORDERED that, to avail themselves of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to Section 1.91(c) of the Rules,¹²²

¹¹⁴ *Id.* § 503(b)(3)(A).

¹¹⁵ 47 C.F.R. § 1.80.

¹¹⁶ 47 U.S.C. § 503(b)(3)(A).

¹¹⁷ 47 C.F.R. § 1.80.

¹¹⁸ 47 U.S.C. § 503(b)(3)(A).

¹¹⁹ 47 C.F.R. § 1.80.

¹²⁰ 47 U.S.C. § 503(b)(3)(A).

¹²¹ 47 C.F.R. § 1.80.

¹²² *Id.* § 1.91(c).

Zawila, AES, CVES, LB, and FCB, in person or by their attorney(s), shall file within thirty (30) days of the release of this Order, a written appearance stating that they will appear at the hearing and present evidence on matters specified in this Order. If any of these parties fails to file timely written notice of appearance, the right to a hearing shall be deemed to be waived.¹²³ Where a hearing is waived, the licensee may submit a written, signed statement of mitigation or justification within thirty (30) days of the release of this Order.¹²⁴ In the event the right to a hearing is waived, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.¹²⁵

124. IT IS FURTHER ORDERED that, to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to Section 1.221 of the Rules,¹²⁶ WPBI, in person or by its attorney, shall file within twenty (20) days of the mailing of notice of its designation as a party, a written appearance in triplicate stating that it will appear at the hearing on the date fixed for hearing, and will present evidence on the issues specified herein. If WPBI fails to file such a written appearance within the time specified, or has not within that time filed a petition to dismiss without prejudice or a petition to accept, for good cause shown, such written appearance beyond the expiration of said twenty (20)-day period, WPBI's application will be dismissed with prejudice for failure to prosecute.¹²⁷

125. IT IS FURTHER ORDERED that copies of this Order shall be sent via Certified Mail, Return Receipt Requested, and by regular first class mail to the following:

William L. Zawila, Esq.
12550 Brookhurst Street
Suite A
Garden Grove, CA 92840

Avenal Educational Services, Inc.
c/o William L. Zawila, Esq.
Vice-President / General Counsel
12550 Brookhurst Street
Suite A
Garden Grove, CA 92840

Central Valley Educational Services, Inc.
c/o William L. Zawila, Esq.
Vice-President / General Counsel
12550 Brookhurst Street
Suite A
Garden Grove, CA 92840

¹²³ See *id.* §§ 1.92(a), 1.221(e).

¹²⁴ See *id.* § 1.92(b).

¹²⁵ See *id.* § 1.92(c).

¹²⁶ *Id.* § 1.221.

¹²⁷ *Id.* § 1.221(c).

H.L. Charles d/b/a Ford City Broadcasting
c/o William L. Zawila, Esq.
12550 Brookhurst Street
Suite A
Garden Grove, CA 92840

Linda Ware d/b/a Lindsay Broadcasting
c/o William L. Zawila, Esq.
12550 Brookhurst Street
Suite A
Garden Grove, CA 92840

Western Pacific Broadcasting, Inc.
c/o William L. Zawila, Esq.
12550 Brookhurst Street
Suite A
Garden Grove, CA 92840

126. IT IS FURTHER ORDERED that the Secretary of the Commission shall cause to have this *Order* or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary